

PROPOSED BALANCED BUDGET/TAX LIMITATION CONSTITUTIONAL AMENDMENT

HEARINGS BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE NINETY-EIGHTH CONGRESS FIRST AND SECOND SESSIONS

ON

S.J. Res. 5

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE
CONSTITUTION RELATING TO FEDERAL BUDGET PROCEDURES

LOS ANGELES, CA
DECEMBER 12, 1983

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PROPOSED BALANCED BUDGET/TAX LIMITATION CONSTITUTIONAL AMENDMENT

MONDAY, DECEMBER 12, 1983

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Los Angeles, CA.

The subcommittee met, pursuant to notice, in committee room 238, Los Angeles City Hall, Los Angeles, CA, at 2 p.m., Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Ladies and gentlemen, this marks the first of two hearings by the Subcommittee on the Constitution on the proposed balanced budget/tax limitation constitutional amendment (S.J. Res. 5). During the last Congress, following more than 40 years of debate on this issue, the U.S. Senate proposed this measure as the 27th amendment to the Constitution. Although the amendment subsequently gained the support of a substantial majority of the House of Representatives, it fell narrowly short of the two-thirds vote required by the Constitution. Senate Joint Resolution 5, the subject of this series of hearings, is nearly identical to the measure approved last year by the Senate and has already secured the sponsorship of nearly one-half of the Members of the Senate, including the very distinguished Senator from California who will be our lead witness this afternoon.

One of the reasons that we have brought these hearings to California, of course, is that this State has been the site of increasing controversy over the proposed amendment. In particular, efforts have been developing within California to have the State become the 33d State to apply to Congress for a Constitutional Convention on the subject of a balanced budget constitutional amendment. Under article V of the U.S. Constitution, when two-thirds of the States of the Union, or 34 States at present, are in agreement on the need for such a convention, the Congress is "obligated," in the words of Alexander Hamilton, to call one.

Although the focus of this hearing will be on the substance of the proposed amendment itself, I would like to make just a few brief observations about the Constitutional Convention effort. Separate hearings have been conducted by this subcommittee on the issue of the Constitutional Convention.

First, it seems fairly clear that the Founding Fathers established the convention method of constitutional amendment because they desired a method of amendment that would circumvent the Congress in the case of a change in the Constitution desired by the States but opposed by the Congress. An illustration of this occurred in 1912 when the States decided that they desired the direct popular election of U.S. Senators. Although this proposal was bitterly opposed by many sitting Members of the Senate, Congress reluctantly proposed what eventually became the 17th amendment to the Constitution after 32 of the necessary 48 States applied for a Constitutional Convention on this matter. Similarly today, although States have been persistent in their support of major reforms in Federal fiscal policies, the Congress has been reluctant to propose those changes on their own. As with the 17th amendment, Congress is being prodded into action largely by the Convention effort of the States.

Second, I would observe that the great preponderance of constitutional scholars—although it is not unanimous—believe that the Convention, should it be called into existence, would be limited in its consideration to the amendments that have prompted it in the first place. In other words, a convention called to consider a balanced budget proposal would not be authorized to consider abortion or the equal rights amendment. Legislation approved by the Senate several years ago, on two occasions, as well as legislation currently being considered by the Senate, would make this point explicit. A Convention would be absolutely limited to the subject matter of the applications for a Convention.

Finally, I would observe that the Convention is subject to normal constitutional checks and balances. Following the Convention's proposals, the Congress and the Supreme Court, in the view of many constitutional scholars, would have the opportunity to review the proposal to ensure that it did not propose something beyond its amending authority. More importantly, however, any such proposal would have to be ratified by three-quarters, or 38 of the States, before it became part of the Constitution. As a result, I believe that the argument against a Convention that alleges concern that the Bill of Rights, for example, will be repealed, is a highly frivolous one.

Ladies and gentlemen, the constitutional debate that is continuing in Los Angeles this afternoon is one of the most significant one of our times. I believe that we have an outstanding group of witnesses with us today—individuals and organizations of widely varying perspectives on the important proposal that is before us now. I am confident that this hearing will make a significant contribution in building the Congressional Record on this amendment as a prelude to further legislative action. I extend my appreciation to each of our witnesses in advance for their efforts to assist us in this effort.

[The following was received for the record:]

98TH CONGRESS
1ST SESSION

S. J. RES. 5

Proposing an amendment to the Constitution relating to Federal budget procedures.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. THURMOND (for himself, Mr. HATCH, Mr. DeCONCINI, Mr. DOLE, Mr. HEFLIN, Mr. GRASSLEY, Mr. DENTON, Mr. BURDICK, Mr. EAST, Mr. LUGAR, Mr. PROXMIRE, Mr. GAHN, Mr. BENTSEN, Mr. RUDMAN, Mr. ZORINSKY, Mr. ABDNOB, Mr. STENNIS, Mr. D'AMATO, Mr. SYMMS, Mr. KASTEN, Mr. PRESSLER, Mr. NICKLES, Mr. MURKOWSKI, Mr. HUMPHREY, Mrs. HAWKINS, Mr. QUAYLE, Mr. JEPSEN, Mr. TRIBLE, Mr. LAXALT, Mr. HELMS, Mr. NUNN, Mr. PRYOR, Mr. DANFORTH, Mr. JOHNSTON, Mr. SIMPSON, and Mr. MATTINGLY) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution relating to Federal budget procedures.

- 1 *Resolved by the Senate and House of Representatives of*
- 2 *the United States of America in Congress assembled (two-*
- 3 *thirds of each House concurring therein), That the following*
- 4 article is proposed as an amendment to the Constitution of
- 5 the United States, which shall be valid to all intents and
- 6 purposes as part of the Constitution if ratified by the legisla-

1 tures of three-fourths of the several States within seven years
2 after its submission to the States for ratification:

3 "ARTICLE —

4 "SECTION 1. Prior to each fiscal year, the Congress
5 shall adopt a statement of receipts and outlays for that year
6 in which total outlays are not greater than total receipts. The
7 Congress may amend such statement provided revised out-
8 lays are no greater than revised receipts. Whenever three-
9 fifths of the whole number of both Houses shall deem it nec-
10 essary, Congress in such statement may provide for a specific
11 excess of outlays over receipts by a vote directed solely to
12 that subject. The Congress and the President shall, pursuant
13 to legislation or through exercise of their powers under the
14 first and second articles, ensure that actual outlays do not
15 exceed the outlays set forth in such statement.

16 "SECTION 2. Total receipts for any fiscal year set forth
17 in the statement adopted pursuant to this article shall not
18 increase by a rate greater than the rate of increase in nation-
19 al income in the year or years ending not less than six
20 months nor more than twelve months before such fiscal year,
21 unless a majority of the whole number of both Houses of
22 Congress shall have passed a bill directed solely to approving
23 specific additional receipts and such bill has become law.

1 "SECTION 3. The Congress may waive the provisions of
2 this article for any fiscal year in which a declaration of war is
3 in effect.

4 "SECTION 4. Total receipts shall include all receipts of
5 the United States except those derived from borrowing and
6 total outlays shall include all outlays of the United States
7 except those for repayment of debt principal.

8 "SECTION 5. This article shall take effect for the second
9 fiscal year beginning after its ratification.

10 "SECTION 6. The Congress shall enforce and implement
11 this article by appropriate legislation."

○

Senator HATCH. We appreciate having all of you here with us today, and we will begin.

Because of the large number of witnesses scheduled to appear before the committee, I would respectfully request that our witnesses summarize their statements, and would request all witnesses to limit their oral statements to 10 minutes, if they can, because we will, without objection, insert their entire statements into the committee record, as well as any additional information that any believe will be useful to the committee.

Because of another commitment, I will be required to adjourn the hearing at approximately 5 p.m. I do wish, however, to accommodate each of our witnesses who have made an effort to be here today.

Our first witness will be the Honorable Pete Wilson, U.S. Senator from California; although he is still a freshman Senator, he is already one of the leaders in the United States on the balanced budget issue, and a leader in many other ways as well in the Senate.

Thank you for taking time out of your busy schedule to be with us today, and express your support for this amendment.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much.

I appreciate not only those kind words, but having the opportunity to welcome you to California. I appreciate even more your leadership in this matter.

I think that those who have followed your effort of trying to bring fiscal sanity to the operation of the U.S. Congress, and most recently the efforts that you made on the floor of the Senate this year during the budget resolutions—as you have adequately addressed in your opening remarks, the subject of the constitutional convention, and I think it was very well put to rest.

The concerns of many have been that a convention of that kind might do great mischief.

My purpose is simply to reflect the experience of one more Member of the Senate, and I hope that that experience perhaps will make clear to some of my constituents, as well as to the member of the committee why I feel so strongly that without the Senate Joint Resolution 5, or some similar piece of legislation, and without a constitutional compulsion, the Congress cannot really be trusted to operate within a balanced budget.

I think it is worth a moment to reflect upon the setting in which this hearing occurs. Increasingly, throughout the year, we can anticipate discussions of what the impact of the deficit may be in terms of reigniting inflation, and inviting a response in terms of increasing interest rates. That threatens to chalk off a recovery that is very solidly begun. That deficit occurs, as you and I both know, because collectively the Congress is unable, and I do not think it is wise even to say unwilling—let us just say because of unwillingness, unable without such a constitutional compulsion to achieve the consensus necessary to operate in a balanced budget.

I commend you for the leadership that you showed this year when you introduced the most stringent of all the budget alternatives that were proposed. That, as you stated on the floor of the Senate at the time, was one that would have left us \$170 billion in deficit, and proposed by a number of responsible organizations, most notably the U.S. Chamber of Commerce, but I think we would all agree we should have been able to do that a good deal better.

Virtually every other public agency in the United States does operate within a budget, whether we are talking about city government, or county government or State government, almost all, by virtue of a city charter, or a constitution, are required to spend no more than they take in as revenue.

The only agency that is exempt from that requirement is the Federal Government, and it has a very dismal record of not being able to live within the revenues we take in. I think it is a tragic and pathetic thing, and it is true that from the time, from about 1970, or virtually the first day of the Reagan administration, the Federal Government has tripled spending. We have doubled it since 1975. The result of this runaway spending has been that over a period of years we have gradually increased debt service.

In fact, from 1960 to 1981, I believe that what the taxpayers of this Nation paid in interest to the national debt is a little under \$10 billion annually, to about \$131 billion in 1981, the last year for which I have figures.

It is well known that debt service threatens to move from the third to the second largest single Federal expenditure, even though there are happily, increasingly signs of economic recovery.

There are people who I think probably would find it a good deal easier to find risk capital if it were not for the inevitable Federal borrowing that results from our having a national debt in excess of trading dollars, and the borrowing with these deficits.

I am preaching to the choir, I know, but what I am trying to make clear is the absolute necessity from an economic point of view to avoid the kind of Federal borrowing that it has a real deprivation upon private money market, denying venture capital to those small businessmen and women with the courage to take a risk in the marketplace.

I am trying to indicate very clearly that without the same kind of compulsion, that States and cities and counties are all relied upon in order to stay within a balanced budget.

I do not think there is much hope of improved performance on the part of Congress. It is not evil men and women. It is people who are very human, and I suggest that the all too abundant evidence illustrates that it runs counter to human nature for those elected to public office to offend those who vote.

By voting to cut spending, that offends a particular constituency. We are talking about not a single person as in the case of a President or a Governor who acts as a funnel for all the different spending, and acts on behalf of the legislature, what we have is 100 Members of the Senate, and some 435 in the House, is a total difference in what their stated priorities are, an inability without this kind of compulsion to limit spending that results from their very different priorities.

I think perhaps the most instructive thing in that respect is that the legislation you have proposed has gone past the Senate, or at least one with 61 votes, and not the two-thirds required, and the next time with 69 votes, two votes more than two-thirds required, and yet this year the very same Senate, almost with slight changes in its composition, could not bring itself to bear for even the most stringent of budget alternatives, and the so-called Hatch amendment, proposed by you, Mr. Chairman, which clearly was \$170 billion out of balance, because they simply could not bring themselves to vote for even that which you said was not as stringent as it should have been.

What I think that means is that people approved this in concept, but as Members of the Senate, having to cast the vote on an individual spending program, they find it difficult to vote to cut. Certainly they cannot seem to get together on what it is that should be cut.

I personally, even though I think we should be under all kinds of compulsion to act upon the deficit, do not anticipate next year that we will. I expect that instead we will see a repetition of the situation that occurred this year.

When after a campaign in which Social Security had been an issue, finally those who had denied a crisis, in November, were willing to admit it in January, and take part in the solution to it.

I doubt in the 1984 election year, we will see a sufficient consensus that it should be cut to allow those who resist take increases to be satisfied there will in fact be cuts.

Probably in 1985 the crisis will become large enough, and be clear enough, and with the election behind, we will see people move to some consensus that involves both elements of tax increase and spending cuts, but even if they do, as I hope by then they will, I think what we clearly need is not this lurching from crisis to crisis, and from election to election, but what we need is the same kind of discipline that is supplied by those who cannot fashion a consensus themselves that contain spending within the limits of the revenues.

The same thing that allows city governments to be responsible, and State governments to be responsible is required in order to make the Federal Government responsible, and give to our children a dollar, and a country of value, and one that is worth preserving.

This country is certainly worth preserving. We are threatening those things that we hold most valuable when we undermine the kind of economic climate that has made it possible for small businesses to grow large, and to give employment, and give hope to those who have the courage to venture into the marketplace with an idea, and with hard work.

I would only say that in this day, Mr. Chairman, there is a growing body of people who reflect a national sentiment that was revealed when last year a market opinion research poll showed that 79 percent of all voters favored the constitutional amendment that requires Congress to plan a balanced budget.

The budget here in California, as you well know, we have undertaken to place that petition before Congress through the initiative processing. The people, if they are given the opportunity, will put

that petition before Congress. It is essentially the measure that you have offered here, and which I am proud to cosponsor.

I can only tell you, Mr. Chairman, that I think without the compulsion, we can expect history to repeat itself, and expect the situation to grow more aggregately, and in a country that offers so much it could be tragic, and we would undermine our economic health, and our moral strength.

I would be happy to answer questions, and happy to see a number of people given the understanding that I think is hard to come by. A great many of those who are now cosponsors, I think you would agree, were reluctant to impress this idea. They have done so based on the failure of Congress to perform without the compulsion it will provide.

Senator HATCH. Thank you, Senator Wilson, I appreciate your personal leadership in the Congress on this issue.

I appreciate your support on this amendment, and the work that you are doing with regard to the initiative petition here in California. It is important that you continue to do that.

Thank you.

Senator WILSON. Thank you.

Senator HATCH. I am not going to ask any questions, because I can always ask you those back in Washington.

We have also invited Senator Cranston to testify. As we all know, he has a busy schedule, and I do not think he is going to make it, but if he does, we will be happy to accomodate him at any time he appears.

We will now turn to Mr. Lewis Uhler, representing the National Tax Limitation Committee. He has been one of the leading proponents in Congress and in the States. Following Mr. Uhler we will have one of the other leading proponents of this amendment, Mr. James Davidson.

Why do we not start with James Davidson, from the National Taxpayers Union. Mr. Davidson and the union have been one of the leading proponents of constitutional amendment, both in Congress and in the States. He is a strong and articulate advocate for fiscal responsibility. We are happy to welcome you here before the committee.

STATEMENT OF JAMES D. DAVIDSON, CHAIRMAN, NATIONAL TAXPAYERS UNION, WASHINGTON, DC

Mr. DAVIDSON. I would like to start by commending you again for the outstanding leadership you provided on this issue.

I think that the fact that the Senate has already passed a constitutional amendment requiring a balanced budget in the last session is——

I commend you for the leadership that you have provided, not only in opening this hearing, but in the last session of Congress, and I think that the Senate passage of a balanced budget tax limitation amendment was a large measure, and a reflection of strong leadership.

We thank you, and I trust that my rather lengthy tome will be entered into the record.

I have just a few casual comments which I would like to make, which should be borne in mind, by not only this Committee, but anybody who has the well being of this country at heart.

We have, I think, a long record in the United States of trying to pull up our socks when the time is right to do something to bring the country back on the track, and there have been many occasions when the United States threatened to go off the track, and through the strong efforts and leadership, such as yours in the past, we have been able to avoid all kinds of difficulties which we have certainly faced.

I think of the Civil War as being a very unfortunate example of the extremes you sometimes have to go to correct a defect in the system, and at that time the slavery question was one which the political process could not seem to address in a direct way, so we got stuck with a very unfortunate kind of resolution, which was, I think, one in which we all would have preferred to see solved in a different way.

There have been other times such as that. You have mentioned direct election of Senators, which is one that the system was able to meet up to. That was, thanks in part, to the efforts of the States.

About that time, Woodrow Wilson said, there really are two types of politics that make a difference: inside politics and outside politics.

Well, I think today's crisis is in the Federal budget, and is one which requires outside politics, which is why the National Taxpayers Union has been working since 1975 with leaders in the State legislatures, to put pressure on the Congress, by petitioning for the convening of a Constitutional Convention. To this date there are 32 of the needed 42 States to act.

The prospects are reasonable that we will succeed, if not in the coming year, then soon after that, in securing the other two States which would be necessary to trigger a Constitutional Convention.

I would hope that Congress itself would be able to see this movement growing, and recognize it is not a frivolous movement, and not the kind of know-nothing proposition that can be ignored and avoided, but really represents the same deep concern for the well-being of the country.

The same desire to see our national policy put on a sound footing has been at the forefront of the efforts that have been characteristic of this Nation when times demanded it.

Now, I feel that you will certainly hear from many people who think a balanced-budget requirement is a lot of nonsense, because you can balance the budget if you want to. So, if you do not want to, it must prove it is not necessary, or that people really do not want it. That is the same kind of argument which is fundamentally unsophisticated when we talk about pollution, and we say everyone has the ability to get rid of pollution. If they do not, it must mean they want the pollution. It is a good thing.

Anybody who said that, I think, these times would be considered quite a fool. I think that similarly the argument that a balanced-budget amendment is sort of beside the point, and it proves if we have deficits, that people really want them.

There is a failing to understand the basic logic of the political process which no less an authority than Thomas Jefferson had

talked about two centuries ago when he predicted we needed such an amendment in the Constitution, which proposed not to prevent the Congress from bankrupting the country. He said that the Earth belongs to the living, and the politicians have no right to burden future generations with the excess spending, the debt, the bills we have run up and been unwilling to pay. That may be a sort of quaintly moral point at this time, but I think it is a practical point also.

If we look at those countries around the world, and there are many of them who have persisted in the policies of running great deficits, we see countries which have run themselves to financial ruin, or the brink of financial ruin, and the British Financial Publication recently completed a survey of economic performance of world countries over the last decade, and surprisingly enough, the countries that have done the worst are the ones that have also been characterized by the greatest deficit spending.

Examples of that that come to mind are Argentina and Israel. Interestingly, the case of Israel, I believe the problem with Israel economy is it has been weighed down by the burden of military spending, which certainly is true, but if you look at the actual composition of Israeli budget, they are spending 50 percent more on the service of debt than they are on military appropriations.

We look at the situation in Argentina, where the inflation rate was analyzed at about 600 percent, and in Israel the most recent month at 900 percent, and we see very similar circumstances.

The budget is 50 percent of spending, and not a surprise under those conditions that that country has careened from one difficulty to the next.

I think those people who would sit here in this room, or in other forums in this country, and say you are going to have a great strong economy, but we are going to be able to continue to behave in an irresponsible way, never have seen the consequences. They are really deluding themselves, and deluding their neighbors.

We believe, in the National Taxpayers Union, and I believe, most Americans believe, that that you do have to pay for everything that you get. Quaint as it sounds, and as old fashioned as it seems, Emerson put it very well when he said if you do not pay for that, then you will get something else. I think few of us do want something else that will be coming down the road, if we do not bring our Federal fiscal policy under control.

That is something else, in my estimation, that will probably be the same sort of thing that happened to one country after another, when the politicians have continued to allow spending to run out of control, which eventually you lose your freedom, as well as the value of your money.

I think there is very little reason to be optimistic that the problem will solve itself, unless we use the mechanisms that our Founding Fathers left to us, and unless we take this spirit of outside politicians as Senator Wilson called it, and go to work to change the Constitution.

Thank you very much.

Senator HATCH. Thank you. I appreciate the efforts you have made, and appreciate your being here today.

Our next witness will be Congressman William Dannemeyer, from California.

Mr. Dannemeyer has been one of the leaders in the House of Representatives in support of the balanced-budget amendment, and certainly a friend of mine, I think California is well served by this outstanding Congressman, I appreciate having you here today.

We are going to put the full statement in the record, so if you care to summarize it, we would appreciate it.

**STATEMENT OF HON. WILLIAM E. DANNEMEYER, A U.S.
REPRESENTATIVE FROM THE STATE OF CALIFORNIA**

Mr. DANNEMEYER. I want to thank you for giving me the opportunity to appear here today. I have a prepared statement, and I will submit it for the record, and will try to summarize it as best I can.

This issue on the balancing of the budget of the Federal Government presents one of the great paradoxes of our time, and I am sure the Senator is aware of it. The paradox essentially is this, poll after poll over the last decade has indicated that the vast majority of the American people, irrespective of political affiliation, Democrats and Republicans, and Independents, when asked, believe the Government of the United States should have a balanced budget, and when further asked, well, how should it come about, by increasing taxes or reducing spending, they go on to add it should be achieved by reducing spending, rather than increasing taxes.

Yet, the paradox comes when you reflect on the October 1, 1982, vote when the House of Representatives, in which I serve, considered a proposed constitutional amendment.

As I think the Senator is well aware, Tip O'Neill, the distinguished Speaker of the House of Representatives, never wanted this proposed constitutional amendment to see the light of day, and he, by assigning it to the Judiciary Committee, bottled it up. The rules of the House permit a discharge petition and we were successful in getting 218 names on the discharge petition.

When we got over 200 signatures on the discharge petition, to circumvent the burial grounds of the Judiciary Committee, Speaker O'Neill went to Democratic Members of the House who had signed the discharge petition, and literally twisted their arms to get them to take their names off of that discharge petition, to keep the issue from coming to a rollcall vote in the House.

He was successful in removing some of the names of the Democratic Members, and we got together, with a group of Members, on the final day, and brought them in as a group, and the rules provided once you get a requisite number of 218, no one can remove their name. By this we were able to achieve getting 218, and then later on the same week, we got a rollcall vote. I think it instructive for us to consider how that vote turned out, because there are two ways, as I see it, to get what the vast majority of people want in America with respect to the spending policy of the U.S. Government.

You can do it by proposed constitutional amendment, or you can change the House of Representatives and to change the House of Representatives, in which I serve, the people of this country have

got to understand how the two great parties break down on this issue, based on not what the Members say, because those of us who occupy public office have interesting things to say to our constituents, and most of us can converse with the English language, and cannot express a sentence that is grammatically correct.

When you listen to us, we sound almost plausible, sometimes. But more important than what we say is how we vote.

I would like to relate just briefly how the House of Representatives voted on this issue, because I think it is instructive as to how the great parties break down on the issue.

When we voted on October 1, 1982, the vote was 236 to 187. It so happens——

Senator HATCH. In favor of the amendment?

Mr. DANNEMEYER. The law of the Constitution says two-thirds are required for approval, and 290 would have been required, and we got 236. So we are 54 short.

Senator HATCH. If everybody had been there?

Mr. DANNEMEYER. Correct.

Senator HATCH. They did not all vote on that occasion?

Mr. DANNEMEYER. Voting for it were 167 Republicans constituting 87 percent of the Republicans who voted on the issue, and 69 Democrats, who comprised 28.8 percent of the Democrats voting on the issue.

The point that I seek to make is that when a high percentage, such as 87 percent of the Republicans in one instance vote for it, and 28 percent of the Democrats are sustaining it, the other 69 percent voted against it, you get a good indication which position the two great parties of this country occupy.

Quite simply, Mr. Chairman, in the House of Representatives, if we are expecting the issue of reduced spending to come about in the House, we have to replace those Democrats and Republicans in there, based on how they vote, and that is the one way it can be done.

More importantly is how we vote. If the people of this country, in their ultimate wisdom, decide they do not want to put a majority of Republicans in the House of Representatives in order to achieve a balanced budget, there is another alternative, and——

Senator HATCH. The other alternative looks more feasible, because they have not decided to do that.

Mr. DANNEMEYER. As you well know, the November 1982 election resulted in 26 Republicans being replaced by 26 Democrats in the House of Representatives, and Tip O'Neill took that 26-Member addition to his total, resulting in 62 percent Democrat, and the mandate to continue the expansion of the liberal welfare state. We have 32 States in the Union that have pursued the alternative, proposing and supporting a constitutional amendment, and making it more difficult to achieve a balanced budget in the Federal Government, and I think it is a mistake to characterize the amendment that Milton Friedman helped to develop as mandating a balanced budget. He does not categorize it that way.

Senator HATCH. Anybody who reads it will realize it is not doing that. It is just making its achievement more possible, and eliminating that bias in favor of spending.

Mr. DANNEMEYER. It necessitates a 60-percent vote to unbalance the budget for the country, and that is by design. I think that is an important distinction for us to recognize.

I have an analysis which indicates there are, of 18 States in the Union that have not yet voted on this issue, 7 have the initiative process, and California is one of those 7, and that is why we happen to have developed the initiative project in our State, to put California among the 34 that would be required in order to have the Congress of the United States call a constitutional convention for the purpose of considering an amendment to require or lead to a balanced budget, or propose such an amendment to the States of the Union.

I know that the distinguished chairman of the subcommittee is from Utah, and may not appreciate why we have to go through this initiative process in California, but it is interesting by way of history if you just talk about it briefly as to why we need the initiative process in this State.

The State legislature considered this subject in 1979, and I will point out to the chairman that both houses of the legislature in the State were controlled by the Democrats.

Mr. McCarthy, our current distinguished Lieutenant Governor, was serving as chairman of the ways and means committee, and the assembly was besieged by Jerry Brown to put out a resolution of the State of California Legislature, petitioning the Federal Government to propose a constitutional convention, or propose the constitutional amendment, and the assembly under the leadership of Mr. McCarthy did an interesting thing. They proposed a work product which called on the Congress of the United States to balance the budget, but it interestingly left out the clause calling for the convening of a constitutional convention. That omission was not an accident.

That was done so as to give life to the old Nation, and some people talk about politicians engaging in the practice of now you see it, now you do not, and it permitted McCarthy to wander around our State, telling constituents of the California Legislature that our State had passed a resolution calling upon the Federal Government and leading to a balanced budget. He does not bother to explain to the citizens that he was personally responsible for taking that clause out, of an adoption of the act of the legislature, which does not put California into the column of the 34 States that are required to hold, or call for this constitutional convention.

The reason I think Mr. McCarthy did that is because he is one of the leading exponents of a liberal welfare state, and does not want philosophically any limitation placed on any agency of the Government which restricts the ability of the Government to raise and spend revenue.

So, we in our State resorted, or must resort, if we are to address this grievance, to the initiative process, which we are now doing. I am privileged to be a part of this, as California congressional chairman, and we are now circulating a petition in our State which calls upon our State legislature to pass such a properly worded resolution which will make California either the 33d or 34th State.

I understand our distinguished Senator from California, Senator Pete Wilson, testified before me, and I think the subcommittee is well aware of the elements and the contents of our proposal.

I can tell the chairman, I believe the initiative process is going well in our State, and we have numerous petitions signed, and we hope in so doing, to place California among, and either be the 33d or 34th State, so that we can go along in the process of rectifying runaway spending which is taking place in the House of Representatives today.

Senator HATCH. Thank you, Congressman Dannemeyer. I appreciate the time you spent, and having you here today. We are grateful to you, and grateful for the leadership you have asserted in the House, because it was extremely difficult getting the 200 signatures.

How often has that discharge petition procedure been used in the House?

Mr. DANNEMEYER. Better the question is, How often has it been used effectively? To my knowledge, I am in my fifth year in the House, and this is the only time I can recall in 5 years where the discharge route has been successful, because you know the workings of Congress. Democratic Members do not like to cross Tip O'Neill, because he has, as we all know, the power of appointment to committees. He controls the destiny of every Democratic Member serving in the House of Representatives, and they do not want to cross Tip O'Neill, and he does not want this amendment to see the light of day.

Tip O'Neill, in effect, has declared war on the taxpayers of this country. He is, in my view, an elitest. His attitude basically is that he knows better than the people of this country how their money should be spent, and he will not accept the idea that having spent a political lifetime expanding the liberal welfare state, that some upstart movement seeking to place a limitation on the Federal Government is going to tell him how the resources of this Nation are going to be spent.

Senator HATCH. We have had five or six uses of discharge petition in this century, so it is clearly a very seldom used thing. I think you and I both commend those Democrats who, in a bipartisan manner, went with us on this amendment. It is an amendment for all the people. It is a bipartisan amendment, and I want to pay tribute to them.

If we had not had Senator DeConcini in the Senate, we would never have made it through.

Mr. DANNEMEYER. Those who signed it were 172 Republicans, and 78.9 of the Members of the Republicans of the House, and—

Senator HATCH. You can imagine the courage they had to have to put their signatures on the line. I remember we had 203 signatures, and every time we put one on the Speaker would pull another one off by twisting arms. Finally, I think 16 Members of the House walked in one day simultaneously and completed the 218. Although we had the debate, it was too late, it became politicized, and we won a majority vote, but lost because we did not get two-thirds.

I want to compliment you, because I think you are one of the few Members who has a consistent record in the House of Representa-

tives for opposing new spending—in the absence of a constitutional amendment.

Whether we have this or not is not going to change your approach in trying to act responsible. So I appreciate the leadership you have asserted.

Mr. DANNEMEYER. Thank you. I appreciate the chance to testify.

Senator HATCH. We are glad to have had you here.

[The following was received for the record:]

PREPARED STATEMENT OF REP. WILLIAM E. DANNEMEYER
THE NEED FOR A BALANCED BUDGET AMENDMENT

Mr. Chairman:

I wish to thank the subcommittee for inviting me to appear at this hearing. I welcome the opportunity. I further wish to commend the Chairman for scheduling this public forum on an issue of critical importance to us all.

The need for a balanced budget is not only obvious, it is crucial. Warning over the effects which massive and unabated deficits will have on interest rates, inflation, and the general economy have become commonplace and emanate from divergent points on the political spectrum. What is not agreed upon, however, is the solution. To those of us who supported the President's program to lessen the tax burden imposed on the American people, it is most disturbing to notice the increasingly frequent calls for raising the taxes we have fought for so long to reduce. Indeed, tax increases at this stage would seriously undermine and threaten to completely undo the economic recovery currently underway. Significantly, it is not insufficient taxation which is causing the deficits.

A comparison of taxes, federal spending, and personal income as a proportion of GNP is illustrative:

	-----PERCENT OF GNP-----					PERCENT PERSONAL INCOME TAXES TO BE RAISED TO BALANCE THE BUDGET
	TOTAL OUTLAYS	DEFENSE	TRANSFER PAYMENTS	ALL OTHER	PERSONAL INCOME TAXES	
1948	12.1%	3.2	3.7	5.2	7.9	0
1958	18.6	9.8	4.8	4.0	7.8	9.0%
1970	20.2	8.1	6.8	5.3	9.3	3.2
1978	21.4	5.0	10.3	6.1	8.7	26.4
1981	22.8	5.5	11.5	5.8	9.9	20.2
1983	24.9	6.6	12.7	5.6	8.9	73.0

Despite the Economic Recovery Act of 1982, we still pay more in taxes today (as a percentage of GNP) than we did in 1978. And these taxes would have to be increased by 73% in order to erase the current budget deficit. Clearly, raising taxes -- a more accurate term than "revenue enhancements" -- is not the solution.

Taxes were cut in 1981. Some taxes were increased in 1982 to stem the rising deficits. Putting the two together produces the following impact on the deficit:

(in \$ billion)

	RECEIPTS	OUTLAYS	DEFICIT	DEFICIT FROM TAX CHANGES
1980	\$517.1	\$576.7	-\$59.6	—
1981	599.3	657.2	-57.9	—
1982	617.8	728.4	-110.7	-\$18.7
1983	600.6	795.9	-195.4	-35.5
1984 est.	668.4	848.1	-179.7	-47.7

So even if we rescinded the entire package of tax cuts enacted in 1981, we would still be faced with \$150 billion deficits.

Another fallacy contends that the deficit has been largely fueled by increases in and, conversely, can be reduced by cuts in defense spending.

Again, facts relate a different story:

(\$ billion)

	TOTAL OUTLAYS	DEFENSE	TRANSFER PAYMENTS	OTHER
1948	\$29.8	\$7.8 (26.2%)	\$9.1 (30.5%)	12.9 (43.3%)
1958	82.6	43.7 (52.9%)	21.1 (25.5%)	17.8 (21.5%)
1970	195.7	78.6 (40.2%)	66.0 (33.7%)	51.1 (26.1%)
1978	448.4	105.2 (23.5%)	215.6 (48.1%)	127.6 (28.5%)
1981	657.2	159.8 (24.3%)	330.3 (50.3%)	167.1 (25.4%)
1983	795.9	210.5 (26.4%)	404.3 (50.8%)	181.1 (22.6%)

Not only do we spend twice as much money on transfer payments -- which includes the so-called "entitlements" (social security, food stamps, student loans, subsidized housing, veterans benefits, welfare, unemployment compensation, medicare, and other programs) -- than we do on national defense, but actual outlays increased \$74 billion from 1981 to 1983 for transfer payments as opposed to an increase of \$50.7 billion for defense during that same period. Moreover, the proportion of the total budget comprised by transfer payments rose from 50.3% to 50.8%.

Certainly, there is much which can be pared from defense without curtailing or abandoning any of the major weapons systems which the Administration seeks. Mandatory contract bidding is one course of action which can and ought to be pursued. It is not the programs but rather the cost of those programs which is at question.

There have been some attempts in Congress to address this need to scale back excessive federal spending. Two years ago, the so-called Rousselot Amendment to the First Concurrent Resolution on the Budget for FY 1983 -- which received the second highest number of votes (182) of any of the several substitute amendments offered -- would have reduced outlays by \$68 billion from the conference report, \$94 billion from the actual amount spent.

In March of this year, I prepared an alternative to the FY 1985 budget which called for spending reductions of \$103 billion from the House Budget Committee bill, \$88 billion from current Administration estimates. And without raising any taxes.

In the past several months, the President's Private Sector Survey On Cost Control -- the Grace Commission -- has issued reports containing 2,236 recommendations totalling nearly \$300 billion in savings over a three-year period. One-third of this amount can be realized through management initiatives undertaken by the agencies or by executive action by the President. I am presently chairing a task force comprising several members in the House to implement these recommendations in a substitute amendment to the First Concurrent Resolution on the Budget for FY 1985 and at the authorizing committee level in the various appropriations bills.

There have also been a number of proposals to "freeze" federal spending at current levels. The advantage of this method is, namely, that no one program would be either singled out or exempt from budget reductions; all would share equally in cutbacks.

Unfortunately, none of these attempts to curtail excessive federal spending has met with any success. Despite overwhelming public sentiment that the deficits are unacceptable, Congress refuses to take requisite action. The leadership in the House, in particular, is predictably loathe to say "no" to those special constituencies which serve the interests of the majority party.

Those of us who refuse to abandon the fight for a responsible fiscal policy have consequently turned to the Balanced Budget Constitutional Amendment as our only recourse. Even here, House intransigence has kept the amendment bottled up in the Judiciary Committee. In 1982, 218 members signed a discharge petition to force a vote on the bill. On October 1, 1982, H.J. Res. 350 received a majority but, since it fell short of the required two-thirds, the measure failed. A similar bill, H.J. Res. 243, a companion to the Senate version, S.J. Res. 5, has been introduced this year by Rep. Barber Conable of New York. I am pleased to be a co-sponsor of this legislation.

There are two major arguments against pursuing this constitutional course of action. First, the responsibility for authorizing and appropriating money --

and the revenue to pay for it -- historically and rightfully belongs with Congress. However, Congress consistently refuses to assume this responsibility when it comes to matching income with outflow. The American people are faced with little choice except to take matters into their own hands and require Congress to balance the budget via constitutional amendment.

The second argument stems from the fear that a constitutional convention will run rampant with a score of "off-the-wall" or irrelevant amendments being produced. Among various safeguards against this occurrence, the most important is the fact that any amendment would require ratification by three-fourths of the states, 38 in all. Considering the difficulty which the ERA has encountered in gaining approval, any non-germane or silly amendment would most assuredly face a hasty and well-deserved oblivion.

It is truly dismaying to notice the highly partisan nature of opposition to a balanced budget among the nation's lawmakers. Fiscal responsibility is not a partisan issue. Nor should it be. Public support transcends party lines. A July, 1982 poll conducted by Market Opinion Research revealed that Republicans approved of a balanced budget amendment by 86% to 12%, Independents approved by 78% to 18%, and Democrats approved by 76% to 17%. Several polls conducted since 1978 have shown not less than 65% support for such an amendment, and no greater than 22% against it. In addition, a March, 1982 Newseek poll indicates that the people would rather balance the budget by reducing spending (85%) than by raising taxes (10%).

Yet when the vote was taken last year on H.J. Res. 350, Republicans voted 167 to 20 in favor while Democrats opposed it by 69 to 167. Among the California delegation, no Republican opposed it while only one Democrat supported it. I suspect this outcome is due primarily to the national leadership of the Democratic Party turning a deaf ear to their own people and protecting, instead, their own special interests which have as their goal the continuation of deficit spending as a means by which to hasten economic and monetary chaos. Only then can they achieve their long-sought after dream of collectivism and redistribution of income.

Despite the setbacks caused by congressional obstinacy, it remains essential for the people of this nation to force their elected representatives to deal with the issue by supporting the constitutional amendment process. Here in California we have an initiative currently underway to place the matter directly before the voters as a referendum which would require the state legislature to take appropriate action. A constitutional amendment is not an end in and of itself; it is a means by which we can reduce interest rates, make mortgages available to middle-income buyers, and allow the beleaguered taxpayers of this nation to keep a little more of their hard-earned money.

Senator HATCH. We will now turn to Mr. Uhler. He is the representative of the National Tax Limitation Committee.

STATEMENT OF LEWIS K. UHLER, PRESIDENT OF THE NATIONAL TAX LIMITATION COMMITTEE

Mr. UHLER. Thank you, Mr. Chairman.

I appreciate the thoughtfulness of the committee in going outside of Washington to accommodate organizations across the Nation, in their local areas, making it more convenient for them to give their views.

I do not think there is any question about the current fiscal situation. In Washington it is intolerable. People on both sides of the aisle share the same view. They have some different approaches on how to solve the problem.

There are lots of "born again budget balancers." It seems they are at work in Washington, but we welcome them.

The rate of spending is clearly the culprit, as one analyzes the numbers. It is not that taxes have fallen off badly, but rather that spending growth has increased enormously over the last decade. The deficits that are generated thereby are the source of several distinct problems:

First. The increase in the permanent cost of debt service. Debt service is \$130 billion plus this year.

It is the third largest item in the national budget. If we continue with \$200 billion deficits over the next 4 or 5 years, we will soon be spending over \$200 billion a year on interest alone—some \$800 plus per year for each man, woman, and child in the Nation before you do anything else.

Second. The impact of the deficit on interest rates, while the subject of a lot of controversy, is very real. All the studies that have been done simply come to slightly different conclusions as to the magnitude of that impact, but it is there.

Third. Government competition in the marketplace for the pool of savings and investments can have no ultimate effect other than limiting or minimizing funds available for people who need to borrow, or need additional equity funds to build and expand their businesses.

Fourth. Finally, and ultimately, I think the issue of the morality of this kind of conduct is awfully important to underscore.

Some studies done by our committee in years past suggest that at the bottom, people from all walks of life simply consider that consistently spending more than you take in is essentially immoral. Thrusting this burden on generations not yet born, is part of that immorality.

Our polls, or those done by other organizations over the last 5 years, suggest that the popular support for balancing the budget ranges to 85 percent. I think the issue of morality goes beyond that related to fiscal responsibilities. It gets at the guts of it. It gets at the guts of confidence in representative government.

If in fact the broad range of American people are desirous of this, and are putting it in a moral context, then what is the erosion of confidence of our citizenry vis-a-vis other kinds of conduct whether it be foreign relations, national defense, et cetera. We are talking about some of the very fundamental questions of representative government, as we continue to test the viability of this experience.

The question remains: Is there a self-correcting mechanism that is possible? We have examined the budget process, which clearly was Congress' own effort to discipline itself. There was a serious desire on the part of those who shaped that process and voted for it, to get discipline on aggregate spending. It has not worked, and the deficits have been greatest in our history since its adoption.

Could we elect better men and women in Congress? I do not know where you would find them. I think by and large the folks elected are trying to do a decent job. Some, obviously, are bent upon spending, as they need reelection, but I do not think we can pin our hopes on better men and women.

We could adopt such a thing as a line-item veto which would shift power and political risk to the President of the United States to blue-pencil elements of the budget. I think that unlikely. As you analyze the range of what might be considered self-correcting, mechanisms they do not—they simply do not—offer much hope of any long-term control. At best they simply would rearrange the chairs on the deck of the *Titanic*, and certainly there is nothing in the current system that is designed to control spending as the fiscal year unfolds.

The Congress simply launches the fiscal year "ship," giving it a certain course. And once launched, they abandon it, looking to the next fiscal year. That fiscal year unfolds with entitlements and so-called automatics responding to economic conditions without any further control or consideration by the Congress.

Our amendment, the one that passed the Senate, has the unique feature of actually controlling outlays during the fiscal year as it unfolds. It requires the Congress to manage cash flow in exactly the same way that we as individuals must manage our own household cash flow, and our own business cash flow.

Bottom line, I think that only one solution offers any ray of hope—it is constitutional rule. We have detected an imbalance in the political process, which really stems from the competence of the special interests, that have overwhelmed the process in Washington.

Then the program makers, in having provided a mandatory procedure to correct them through a mandatory process—we must now accept their expectation, and address this fundamental philosophy of the constitutional rule, and one that will provide not only enormous flexibility to Congress, but also enormous and new discipline which will aid the Members themselves.

We found in some States limitations of legislators, who fought this kind in the early stages, have come to us since their passage and implementation and said, "this measure is a legislators best friend." When a constituent comes and says, "Can you not give us moneys for that new mental hospital?" We say, "You, the people, told us that we have to live within certain constraints, and we are fresh out of money. Now, if you want a mental hospital, you go and talk to some folks who want some roads, and we will set priorities, and we will have tradeoffs." I think that is the bottom line.

Senator HATCH. We have had a lot of people come up and say they were not for it last year, but are considering supporting it now. They want to try to get things under control, because we are not making it in any other way. There is too much of a bias in favor of spending back there; all the rewards come from the spending, not from conserving.

So I appreciate the leadership that you and the people like Jim Davidson have given to this issue. Your organization has certainly done tremendous work on this in the last Congress. I appreciate everything you did, as well as what you are doing now.

Mr. UHLER. We certainly want to thank you for your leadership, and Mr. DeConcini's, and the others who helped shape the policy.

Senator HATCH. I appreciate having you here. Roy Ash is the next witness representing the Committee for Economic Development. We are pleased to have you here today, and to take your testimony at this time.

STATEMENT OF ROY ASH, COMMITTEE FOR ECONOMIC DEVELOPMENT, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET

Mr. ASH. The pleasure is mine. We are both engaged in seeking the same objective; we are both engaged in an effort to figure out how to deal with the burden of the Federal deficit.

I appreciate the opportunity to comment on the proposed constitutional amendment as a way to control spending and taxes. In fact, the very advancement of the idea has served to illuminate the question, and served to heighten the interest and discussion of possible solutions of the problem we all share.

It was observed by others testifying here, and polls across the country have shown that a substantial majority of the American public, 70 to 80 percent, agree a constitutional amendment is a good idea.

Spending and taxing must be controlled; our elected representatives do not seem to be able to do it, therefore let us force them to do so.

Well, if the public were polled in a different way, that is, whether it liked the American institution of apple pie, the response also would be overwhelming. But then if it were made clear that in each piece of pie there were a couple of juicy worms I think the

outcome would be different. So I am here to talk about the juicy worms.

I certainly share your objective, but believe that if the question of controlling Federal spending were expressed in its full dimension the American people would conclude that the constitutional amendment is not the way to get the job, even as they would agree with the goal being sought.

I make these comments representing the Committee for Economic Development. The CED is an organization composed of 200 leading businessmen across the country, and they are generally chairmen and presidents of major corporations. The Committee for Economic Development has recently released for publication a report on the budget process. I know you have received a copy, and I am sure your staff has more than one copy to consider.

That committee decisively recommends against approaching budgetary control through a constitutional amendment, and for reasons I will set out.

As you have indicated, I represent another national organization, the Committee for a Responsible Federal Budget. This is a bipartisan organization, of former Republican and Democratic Members of the Legislature, and of the executive branch concerned with spending and taxing. It also had stated a constitutional amendment to balance the budget is unworkable, and counterproductive.

I applaud those who talk about solutions to runaway spending and deficits, including the constitutional amendment. We are all trying to achieve the same end, but the organizations for which I am speaking today believe a constitutional amendment will not work in practice as intended, and instead contribute to greater spending, to the point of getting totally out of control.

I would like to discuss six main reasons why we believe a constitutional amendment is not a good idea. I could list 25 or 30, but I will stick with the main 6, and then as to what will work, I will merely refer to the work of the CED, a copy of which report is in your office.

The first reason it is not a good idea is that the problem is now, and we have certainly heard the earlier speakers today observe the imperative need to do something. It must be faced and dealt with now.

The constitutional amendment will begin to take effect only after a number of years, say between 4 and 9. By that time the deficit genie will be well out of the bottle.

I can go into the reasons, but we all know them. It is not even proposed to take effect immediately. In the meantime the illusion of action will relieve the pressure to do the job that has to be done now.

Spending and taxing can go on their merry, unbalanced ways, all the while the politicians can claim they have taken decisive action. We do not need political illusions. We need action, and we need it right now.

The second major reason the idea should be rejected is that it is likely to add to spending and taxes, and worse yet, the condition will be so concealed we will not be able to see it nor control it. Spending and taxing will be driven underground. It will be sup-

planted by regulatory tax and spending, and a number of other readily available escape routes.

Let me explain that: today Federal Government expenditures for health programs are about \$100 billion annually. Taxes are collected into the Treasury and paid out in various benefits as expenditures. The transactions are run through the budget.

Under sufficient pressure to not upset a budget, the Government can instead mandate that all employers to provide directly, or through various kinds of insurance, the type of medical services now paid through taxing and spending. It does not take much imagination to draft regulatory laws that apply to all employers and all employees, and their family members, and extend it to employees' retirement. Major portions of the \$100 billion can be driven underground; we will not be able to see it. Through regulation we have forced the public to pay in higher prices or lower profits rather than by taxes. They will never see it because no money will run through the constitutionally controlled budget.

The same can be done for \$30 billion of unemployment costs. Employers could be required to provide 6 months or 1 year's notice for all terminations of employment. Costs do not disappear, they just go underground.

We can also escape controls using revolving funds, and loans and loan guarantees instead of budgeted expenditures. Government expenditures should be in the budget, not out.

I do not guarantee all of this subterfuge will happen. Certainly it could, and has been happening to lesser degrees. If it does we will lose fiscal control totally. I do know we cannot adopt a constitutional amendment prohibiting politicians from being imaginative under pressure.

The third reason to look askance at the constitutional amendment is to consider that part, and it is a necessary part if it is to work at all, that requires actual expenditures for a year not to exceed a prespecified level for the year. During the course of all years actuals vary from predictable courses for unavoidable, yet acceptable reasons.

In fact, if we were to look at the last 5 years, the actual deficit varied from the beginning of the year budget by \$32 to \$103 billion in each of those years. While this was the deficit variance, expenditure variances were significant parts of the difference. These variances accrue irregularly during the course of each year. Even during the 67 days from last July 25, the midsession review of the 1983 budget, to end in the 1983 fiscal year, September 30, the expected deficit for the year changed by \$14.4 billion.

Again, spending variances were a major part of the deficit and variances. Since the proposed constitutional amendment requires actuals to conform to planned amounts, a real scramble will take place every year, especially near the end of the year, to make the two match, basically by raising or lowering expenditures, with short notices, short lead times.

If because of last-minute variances more money is available to spend, you know what will happen, it will be spent. In fact, with a few years of experience I can imagine Congress having a list of spending programs ready for quick passage as needed to fill the gap.

Let us assume the opposite, and we are racing through the year, and we get 60 to 90 days from the end and, say, \$15 billion has to be removed from actual spending in those remaining days, who decides what to cut? The Congress cannot act in that 60- to 90-day time and get approval, and there is plenty of experience to support that. Should the President have that authority? I'd give the President that authority, but would we give it to any President? Would the Congress give such authority to the President? Yet the decision has to be made and acted upon to meet the Constitution. Even if the President had such authority, or it were divided any way, would some areas be exempt, like Social Security, and veterans benefits? We know one of the amendments proposed for this legislation was to exempt Social Security and veterans benefits.

Senator HATCH. All those, Roy, were defeated; we had 30 some amendments, and we defeated them.

Mr. ASH. When the time comes, and it has to be faced, because there is two being resolved, exactly how it will be faced.

Senator HATCH. If we can get it through the Senate, that has to be faced in the House. If it goes through both Houses of Congress, then we would be limited with that language of course.

Mr. ASH. In any event, there will be pressures to figure who are going to take the cuts, and in my view, that can come down to defense. Defense is the only other expenditure big enough to meet short-term cut requirements. Lead times in procurement limit weapons production programs as a source of quick cash. Yet we are trying to save \$15 billion in 60 or 90 days. Calculations will show we need to close every single military base, and that might do it, barely.

I do not think we want a yo-yo defense, or for that matter, other programs, but if quick money is not saved on short notice, someone goes to jail, so to speak, for violating the Constitution. That suggests the fourth point.

Violation of the Constitution is a criminal offense, subject to judicial action. Do we really want the judicial branch to be part of spending decisions? It is tough enough with two branches of the Government working on it, without getting the courts into spending and taxing. They are political decisions. Do we want the courts to decide what should be spent on defense and social programs, and how much should be spent in total. Mr. Penner, who is now the head of the Congressional Budget Office, said, "I am waiting for the day the Supreme Court declares the President's economic forecast unconstitutional." That is an interesting thing to speculate upon, because in theory it could be.

Senator HATCH. They are all legitimate points, and have to be addressed if this is going to pass.

Mr. ASH. I think we should worry either way. If there is a violation of the Constitution, and the courts get involved, we have troubles ahead. If it is not a violation of the Constitution, and the amendment is to be self-enforcing, will the spending decisions be any more self-enforcing than they presently are, especially when the flow of information to do so becomes more obscure.

Let me go into the next reason the constitutional amendment is on a counterproductive track, and would lead to more and not less spending. The proposed amendment provides the budget need not

be balanced if a supermajority of the Congress votes to allow it. That's just an invitation to spend more money. I would suggest that we consider this.

If congressional action to spend, say just \$1, required one vote, the vote would be easy to get. The proponent would vote for it, the \$1 would be spent. Even 25 percent of congressional votes probably would be easy to get on most issues.

The more votes you need for a supermajority, the more you have to offer for those votes. One thing available to offer is more money for the favorite expenditure of those whose votes are being sought. The condition is the same as announcing that the spending train is about to pull out of the station, and if you help release the brakes I will let you and your favorite program on. The more votes needed to release the brakes, the more cost to get those votes, and spending goes up.

The last reason I have today of why a constitutional amendment is counterproductive is that one of the purposes of Federal fiscal activity, in contrast to that of the States, is to assist in economic stabilization.

A State's budget is not like the Federal budget. A State budget excludes capital expenditures. It includes interest on money that is borrowed for capital costs plus only one-fiftieth of the original cost of capital per year.

If the Federal Government accounted as do the States, its budget would be balanced right now because much of its outlays would be considered capital rather than operating expenditures.

As I've said, one of the functions of the Federal budget is to assist in economic stabilization. In years of economic decline its useful to operate with some deficit to stimulate recovery. These are acknowledged stabilization activities of the Federal Government.

In summary, for the reasons that I have given, and there are a number of others, the constitutional amendment as proposed, in my judgment, and those of organizations for which I spoke today, will not work effectively to reduce expenditures, but instead will have a tendency both to drive expenditures up, and to drive them underground to where the American people would not be able to see them, and the politicians would not be able to control them. Most of all, it will allow us to do nothing right now, except to posture.

Our objective should be to keep a full spotlight on taxing and spending. Hold elected officials responsible, and do so now. Budgeting is a political exercise not a mechanical one. Congress has the authority, without a constitutional amendment, to act on the budget.

The CED has made a number of recommendations which are described, along with supporting analyses, in the recent publication to which I earlier referred, and would suggest you read.

If I may just have 30 seconds more for sort of a postscript. You know I have not used any of my allotted time to deplore the enormity of Federal deficits and describe the reasons they have been generated. That has already been done. That is not to say I feel any less strongly than anyone here about the serious implications they have for a whole society.

I am as much an economic conservative as those who preceded me, and can make all those same arguments, if I felt that was the way to use my time. In fact, I think the record will show it was my own personal effort and writing, in 1974 and 1975, that first described the full nature of Federal spending trends. The budget even then was getting out of control, and continued on that course leading us to the position we find ourselves in today.

Senator HATCH. You have raised a number of good arguments; I think you have raised genuine and legitimate concerns.

Let me make a couple of points here that I hope you will also consider. Your arguments would seem to me to have equal relevance with respect to virtually any proposed budgetary reform. They can each be circumvented by Congress, by a Congress that desires to do so. So could the first amendment for that matter, but the Congress does not do that.

You seem to say that a defect of the amendment is that it does not close all of the avenues of avoidance, all the possible means of avoidance.

Your argument seems to say that because the balanced budget amendment would establish difficult problems with enforcement that it ought to be rejected. That is true with any amendment to the Constitution. I know you are not saying your arguments are prescriptions for not doing anything at all.

Mr. ASH. That is right. We have left you 100 pages of what to do, the CED recommendations.

Senator HATCH. I respect you for everything because you are truly one of the most knowledgeable people on the budget in this country; as you know, I have a great deal of regard for you, but I think that Senate Joint Resolution 5 places the debate where it should be, and requires all Members of Congress to have to stand up and vote at a time when they are all claiming the deficits are too high, and unwilling to do anything about it. It does not mandate an absolute balanced budget as you acknowledged a minute ago in your remarks; it just makes it more difficult to increase taxes through the use of inflation, by pushing people into higher marginal tax brackets, and restores accountability to the budget process.

In the past we have just relied on inflation pushing all of us into higher margin tax brackets. Rather than seeking concurrent budget resolutions designed to resolve the deficits.

One thing the balanced budget amendment does do is it does re-establish the relationship between, spending and taxing, that I think has been sharply eroded in recent decades.

Mr. ASH. That is one of the best things that is happening. We now have the American public aware and concerned about it, and looking for something to do that will be effective. I must say, 10 years ago when I mentioned the word "budget" nobody listened, and nobody cared. It made no difference to anybody.

I am sure if we both had our way we would not need a constitutional amendment, we would have two votes to balance the budget tomorrow.

Senator HATCH. We could make the budget process work. If we had our own way we might do what Congressman Dannemeyer

said and elect Republicans and Democrats that are sincerely concerned about that.

Mr. ASH. Little by little, supporters of fiscal responsibility are being elected, rather than delected as Members of the Congress.

Thank you for the opportunity. I have made my points.

Senator HATCH. We appreciate your being here, and know you have put a lot of effort in this. We are building a good record here today.

Our next witness will be Prof. John Noonan.

STATEMENT OF PROF. JOHN T. NOONAN, JR., UNIVERSITY OF CALIFORNIA BERKELEY LAW SCHOOL

Mr. NOONAN. It is an honor to be invited to testify on this occasion.

I do have a prepared statement with some articles attached to it which I will submit for the record.

Senator HATCH. As with all statements, they will be printed in the record.

Mr. NOONAN. I will try to summarize, and highlight.

The last time I had the opportunity to testify on this subject in this State was the legislative session 4 years ago, when the Democratic Governor of our State, Jerry Brown, and the dean of the University of Chicago Law School, and I were the witnesses, urging the legislature to adopt the petition to Congress to call a Convention.

I was struck at that time, as I am struck today, by the fact that the opposition was not in opposition to our objectives or the merits, but to fears, and I would say fanciful fears about the method of accomplishing the objective. I would like to say something about that method, which is proving so useful in moving Congress ahead—the method which you have already touched upon, the method of a Convention call.

There are two methods that were provided by article V—and one by Congress proposing amendments to the States, and the other by a Convention proposing amendments to the States. The power given to the States to make full application for a Convention was specifically introduced to meet George Mason's objection that, without it, Congress had too much control. The two methods were intended to be parallel and equal. In James Madison's words, article V "equally enables the general and the State governments to originate the amendment of errors."

The workable process designed by the Founders contemplated nothing so foolish as permitting the States to call only for a Convention to amend the Constitution as a whole—the strange interpretation of article V argued by Charles Black of Yale Law School. Just as much as Congress, the States can limit the amendments to specific topics, and the Convention to the topics they chose to propose.

The bugaboo of opponents of a Convention is that it would be a runaway body, freely meddling with topics it is not called to address, or at least finding that one topic is hopelessly intertwined with a second topic, and so on, until a whole swarm of amendments

is generated. Against these hypothetical fears there are three substantial barriers.

First, a Convention can be called only by Congress. Congress specifies the topic. Congress locks the Convention into the topic it specifies. If this barrier were broken by lawless men and women at the Convention, a second barrier exists: Congress sends out the amendments for ratification. Congress will not send out amendments adopted contrary to the agenda it set for the Convention. Since Congress right now has power to propose amendments directly and does not do so, it must be a very fearful person indeed who thinks Congress would lawlessly send out for ratification the amendments of a lawless Convention when it is now so cautious and law abiding in exercising its own authority. But suppose a lawless Convention and a lawless Congress, three-quarters of the States would have to ratify anything proposed. This requirement for overwhelming consensus is a third barrier, a third lock on a runaway Convention.

Contrast these effectual restraints with the absence of any restraints on our Supreme Court which from time to time without any warrant in article V has sat as an ad hoc committee to amend the Constitution. Which method is founded on law, responsive to democratic principle, and restrained by effective barriers? Unquestionably, the method provided by the Constitution itself.

At least three times in our history the invocation of the Convention method has been a factor prompting Congress to act and propose its own amendment—in the case of the 21st amendment repealing prohibition; in the case of the 22d amendment limiting Presidential tenure to two terms; and in the case of the 17th amendment providing for the direct election of Senators. The last case is the most relevant—for here was an amendment which struck at a power bloc in Congress. Left to itself, the Senate would not act. When 30 States applied for direct election, the next year Congress yielded and sent its own amendment forward. Article V has worked to make Congress respond to public demand.

There are those who assail the balanced-budget amendment as an economic matter inappropriate for inclusion in the Constitution. They appear to forget that the 16th amendment deals with a topic most of us would call economic.

Others object to the difficulty of enforcing the amendment because it involves the action of Congress. They forget that article I, section 7, clause 1 of the Constitution deals with the power of the House of Representatives to originate money bills and, although imperfectly enforced, has generally guided congressional procedure. They forget that article I, section 9, clause 7 deals with the exclusive power of Congress to appropriate money from the Treasury and, although occasionally ignored by a Federal judge, has generally kept the power of the purse with the elected representatives of the people.

"I wish it were possible to obtain a single amendment to our Constitution," Thomas Jefferson wrote in 1798. "I would be willing to depend on that alone for the reduction of the administration of our Government to the genuine principles of its Constitution; I mean an additional article, taking from the Federal Government the power of borrowing." The balanced-budget amendment is the

modern form of the single amendment which Jefferson desired as necessary to restore Government to the principles of the Constitution.

The Convention method of achieving such an amendment has been endorsed by the makers of the Constitution—Washington, Franklin, Hamilton, Madison—and in the midst of national crisis by Abraham Lincoln. It is a method which can be used now to bring about not only a balanced budget but a better balance in the political structure of the United States.

Thank you.

Senator HATCH. Thank you very much, Professor Noonan.

[The following was received for the record:]

AMENDING THE CONSTITUTION
TO BALANCE THE BUDGET: THE CONVENTION METHOD

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The idea that a Constitution should provide a process for its own amendment was one of the great innovations of American democracy. Constitutions before ours had been imagined to be divinely-ordained, perfect, unchangeable. Our founding fathers wisely made provision for peaceful improvement. Article V of the Constitution setting out the methods of amendment was deliberately framed to avoid the mistake made in the unworkable Articles of Confederation: amendment should be anticipated and workable according to the terms of the Constitution itself.

Workability. Two methods were provided by Article V -- one by Congress proposing amendments to the States, the other by a Convention proposing amendments to the States. The power given the States to make application for a Convention was specifically introduced to meet George Mason's objection that, without it, Congress had too much control. The two methods were intended to be parallel and equal. In James Madison's words, Article V "equally enables the general and the State governments to originate the amendment of errors."

The workable process designed by the founders contemplated nothing so foolish as permitting the States to call only for a convention to amend the Constitution as a whole -- the strange interpretation of Article V argued for by Charles Black of Yale Law School. Just as much as Congress, the States can limit amendments to specific topics and the Convention to the topics they chose to propose.

Three Locks. The bugaboo of opponents of a Convention is that it would be a runaway body, freely meddling with topics it is not called to address, or at least finding that one topic is hopelessly intertwined with a second topic, and so on, until a

whole swarm of amendments is generated. Against these hypothetical fears there are three substantial barriers.

First, a Convention can be called only by Congress. Congress specifies the topic. Congress locks the Convention into the topic it specifies. If this barrier were broken by lawless men and women at the Convention, a second barrier exists: Congress sends out the amendments for ratification. Congress will not send out amendments adopted contrary to the agenda it set for the Convention. Since Congress right now has power to propose amendments directly and does not do so, it must be a very fearful person indeed who thinks Congress would lawlessly send out for ratification the amendments of a lawless Convention when it is now so cautious and law-abiding in exercising its own authority. But suppose a lawless Convention and a lawless Congress, three-quarters of the States would have to ratify anything proposed. This requirement for overwhelming consensus is a third barrier, a third lock on a runaway Convention.

Contrast these effectual restraints with the absence of any restraints on our Supreme Court which from time to time without any warrant in Article V has sat as an ad hoc committee to amend the Constitution. Which method is founded on law, responsive to democratic principle and restrained by effective barriers? Unquestionably the method provided by the Constitution itself.

The Usefulness of the Method. At least three times in our history the invocation of the convention method has been a factor prompting Congress to act and propose its own amendment -- in the case of the 21st Amendment repealing Prohibition; in the case of the 22nd Amendment limiting presidential tenure to two terms; and in the case of the 17th Amendment providing for the direct election of senators. The last case is the most relevant -- for here was an amendment which struck at a power bloc in Congress. Left to itself, the Senate would not act.

When thirty States applied for direct election, the next year Congress yielded and sent its own amendment forward. Article V had worked to make Congress respond to public demand.

The Appropriateness of a Balanced Budget Amendment. There are those who assail the balanced budget amendment as an economic matter inappropriate for inclusion in the Constitution. They appear to forget that the 16th Amendment deals with a topic most of us would call economic.

Others object to the difficulty of enforcing the amendment because it involves the action of Congress. They forget that Article I, section 7, clause 1 of the Constitution deals with the power of the House of Representatives to originate money bills and, although imperfectly enforced, has generally guided congressional procedure. They forget that Article I, section 9, clause 7 deals with the exclusive power of Congress to appropriate money from the Treasury and, although occasionally ignored by a federal judge, has generally kept the power of the purse with the elected representatives of the people.

"I wish it were possible to obtain a single amendment to our Constitution," Thomas Jefferson wrote in 1798. "I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution; I mean an additional article, taking from the federal government the power of borrowing." The balanced budget amendment is the modern form of the single amendment which Jefferson desired as necessary to restore government to the principles of the Constitution. The convention method of achieving such an amendment has been endorsed by the makers of the Constitution -- Washington, Franklin, Hamilton, Madison -- and in the midst of national crisis by Abraham Lincoln. It is a method which can be used now to bring about not only a balanced budget but a better balance in the political structure of the United States.

For further references see Noonan, "The Convention Method of Constitutional Amendment -- Its Meaning, Usefulness, and Wisdom," 10 The Pacific Law Journal No. 2, pp. 541-646 (1979); and Noonan, "The Balanced Budget -- The States Call for a Convention" in Wagner, Tollison, Rabushka and Noonan, Balanced Budgets, Fiscal Responsibility and the Constitution (Cato Institute, 1982).

APPENDIX A

The Balanced Budget - The
States Call for a Convention

John T. Noonan, Jr.

Introduction

One of the great American innovations at the founding of our Republic was a Constitution which could be amended. At the time "it was heresy to suggest the possibility of change in governments divinely established and ensured."¹ To provide in the written instrument itself for change was to take the position in advance that experience would show defects, that change would sometimes be desirable and good, and that the people of the next generation or the twelfth generation later could be as wise and trustworthy as the Founding Fathers themselves.

Thirty-one states have now called for a Convention to amend the Constitution of the United States to require, except in time of true emergency, a balanced federal budget. Is amendment by Convention workable? Is it wise? Are the calls by the states valid, so that Congress must bring a Convention into being when three more states join the present thirty-one? Those who are hostile to the requirement of a federal budget have attempted to cast doubt on the calls made by the states and even on the process of amendment by Convention. The thirty-one calls, however, are entirely valid. The Convention method of amendment is established by the Constitution itself. It has been approved by our wisest statesmen. The doubts raised against the calls and the method are baseless. A demonstration of their baselessness requires a more particular examination.

The Convention Method

One of the great recognized defects of the Articles of Confederation which preceded the Constitution was their failure to provide for amendment. One of the first subjects put before the Constitutional Convention when it met in Philadelphia in 1787 was a provision for the future amendment of the Constitution that was then being made.² The delegates—who included such

¹Charles E. Merriam, *The Written Constitution and the Unwritten Attitude* (New York, 1931), p. 6.

²Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, 1911), Vol. 1, p. 22. (Madison's journal, May 20, 1787).

men as George Washington, Alexander Hamilton, James Madison, and Benjamin Franklin—unanimously agreed that amendment must be built into the document.³ From the beginning it was accepted as a fundamental American principle that our Constitution could be changed by the peaceful methods given in the Constitution itself.

Two methods of amendment were provided. One was dependent on the initiative of Congress, the other on the initiative of the states. The methods were intended to be parallel ways of changing the Constitution. In Madison's words in *The Federalist* the Article on Amendments "equally enables the general and the State governments to originate the amendment of errors."⁴ It was recognized that those in power in the national government might be disinclined to give up any of their prerogatives, so that it was particularly necessary to leave open the initiative of the states. As Hamilton pointed out in his Final Plea for Ratification in *The Federalist*, the second method of Amendment was provided in order that Congress would be under a "peremptory" duty to call a Convention when two-thirds of the states made application for one.⁵

Doomsayers now claim that the second method of amendment provided by Article V of the Constitution is unworkable; that it is "shrouded in legal mystery of the most fundamental sort," that it is full of "fundamental uncertainties," that it will lead to confrontations between branches of government of "nightmarish dimensions," and that its invocation will lead to trauma for the country. It is clear that most of these doom-sayers are opponents of the balanced budget amendment itself. Like Charles Black of Yale Law School, they frankly admit their bias. In the 1960's when there was "opportunity to deal with the sensitive constitutional issues objectively," the view of such constitutional lawyers as Senator Sam Ervin was that the

³*Ibid.*, Vol. 1, p. 203, (Madison's journal, June 11, 1787).

⁴*The Federalist*, number 43.

⁵*Ibid.*, number 85.

Convention method was eminently sensible and practicable.⁶

Reading the current prophecies of gloom, one is reminded of what an inveterate Tory might have pronounced in 1789 as our new Constitution was launched. Every word—legal mystery, fundamental incertitudes, confrontations between branches of government—could have been used and would in some sense have been true; but what distrust of popular government it would have been to act on such gloomy guesses! What distrust it shows today both in the wisdom of the Founding Fathers who gave us Article V and in ourselves to predict that we cannot safely use the second great mode of amendment offered by our Constitution.

The principal objection offered to the Convention method is that a convention may be a runaway body enacting amendments on all kinds of matters not within its call. In the most flamboyant expositions of this danger it is even suggested that the Convention could repeal the Bill of Rights. Is there anything at all to such fears? The language of the Constitution is clear. Congress is to call a Convention on the application of the legislatures of the states. Congress is not free to call a Convention at its pleasure. It can only act upon the states' application; and if Congress can only act upon their application it cannot go beyond the purpose for which the states have applied.

The states which have called for a Convention on a balanced budget have been remarkably clear in what they have required. For example, many have called for a Convention "for the sole and exclusive purpose" of proposing a balanced budget amendment. Others have provided that their applications shall be deemed null and void if the Convention fails to be limited to the "specific and exclusive purpose" of proposing such an

⁶Compare Charles L. Black, Jr., "Amendment by National Constitutional Convention: A Letter to a Senator," *Oklahoma Law Review* 32 (1979) 3, p. 644 with Sam J. Ervin, Jr., "Proposed Legislation to Implement the Convention Method of Amending the Constitution," *Michigan Law Review* 66 (1968) 5, p. 894. For examples of doomsaying, see Laurence H. Tribe, "Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment," *Pacific Law Journal* 10 (1979) 2, pp. 627-629.

amendment. If the Convention were not called for this purpose such resolutions of the states would simply self-destruct.⁷

If the states apply for a Convention on a balanced budget Congress must call a Convention on a balanced budget. It cannot at its pleasure enlarge the topic. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Congress on the subject which the states have set out and for which Congress has called the Convention.⁸

The Intention of the Founding Fathers

On the very day—indeed minutes after—Article V was adopted by the framers with only two states (Connecticut and New Jersey) opposing, there were participants—John Randolph and George Mason—who wanted another general Convention but showed no appreciation of the fact that the Constitution gave them means of getting one. And their chief opponent, Charles Pinckney, who had voted for Article V, was adamantly opposed to a new general Convention in which “confusion and contrariety” would result. If all that Article V gave to the states was such a power of requiring a general Convention, how strange it was that persons so sensitive to a general Convention's dangers so readily agreed to Article V!⁹

James Madison had first suggested that it would be Congress, not a Convention, which would have power to propose

⁷See Walter E. Dellinger, “Who Controls A Constitutional Convention?—A Response,” *Duke Law Journal* (1979) 4, p. 1001. See also 125 *Congressional Record* S 1306-S 1309 (February 8, 1979).

⁸See the conclusions of the Special Constitutional Convention Study Committee of the American Bar Association, *Amendment of the Constitution* (1974), p. 17. Among the members of this committee reaching this unanimous conclusion were Judge Sarah Hughes of the Federal District Court and Dean Albert Sacks of Harvard Law School. The same conclusion is reached by Professor Paul G. Kauper of the University of Michigan Law School, “The Alternative Amendment Process: Some Observations,” *Michigan Law Review* 64 (1968) 5, p. 912. Also see Note, “Proposed Legislation on the Convention Method of Amending the United States Constitution,” *Harvard Law Review* 85 (1974) 8, p. 1629.

⁹Farrand, *Op. Cit.*, Vol. 2, pp. 630-631.

an amendment on application of two-thirds of the state legislatures. Madison's proposal was objected to by George Mason, who thought it gave Congress too much control, and by Roger Sherman who feared that the amending process could be used to deprive states of their equality in the Senate or affect slavery in the states. Sherman's point on the Senate was met by a specific provision eliminating this specific topic from the amending process, while a similar effort to immunize another specific subject, slavery, from change was voted down. Mason's difficulty, that Congress had too much control, was met by language that Gouverneur Morris and Elbridge Gerry introduced "to require a Convention on application of 2/3 of the states." This language made the states more able to act, not less.¹⁰

This understanding of Article V of the Constitution is confirmed by both Madison and Hamilton. Madison says explicitly that the national and state governments have equal powers of amendment.¹¹ It is obvious that the powers are very unequal if the national government can propose individual amendments but the states can only propose amendments of the whole Constitution. If Congress can propose one amendment at a time, so can the states. Hamilton is, if anything, even more explicit. He says in so many words that every amendment

would be a single proposition and might be forwarded singly. There would then be no necessity for management or compromise, in relation to any other point—no giving or taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment that amendment must infallibly take place.¹²

There is absolutely nothing in this authoritative exposition that suggests that the states can only call a general convention where the whole Constitution will be on the table to be bar-

¹⁰*Ibid.*, Vol. 2, pp. 559-629.

¹¹*The Federalist*, number 43.

¹²*Ibid.*, number 85.

gained over. As Senator Sam Ervin has observed, such a construction "would effectively destroy the powers of the States to originate the amendment of errors pointed out by experience."¹³ What is contemplated and assured by Article V is entirely different: two-thirds of the states agree on an amendment and "that amendment must infallibly take place."¹⁴

The Locks on the Convention

The Convention is confined by multiple locks which are ample to keep it within bounds. The first lock is that Congress calls the Convention. It can specify the topic. When Congress calls a Convention on a balanced budget, it will lock the Convention into consideration of that subject. But suppose, the fearful doomsayer persists, the Convention disobeys. Suppose that like lawless judges the Convention takes the law into its own hands and acts on subjects Congress had not entrusted to it. What then? Then Congress applies the second lock. Under Article V, Congress alone can send an amendment to the States for ratification. If the Convention is disobedient, Congress will lock it into disobedience. It will not send out the amendment for ratification.

Yet suppose—a questioner may persist like a small child—Congress fails to abide by its own rules. Suppose it caves in to the Convention. The most sensible answer to this supposition is that if you don't trust Congress here, you don't trust the amendment process in any form. After all, at any time Congress can pose any number of amendments and send them to the states. It doesn't have to wait for a Convention. So one is either afraid of Congress proposing amendments under the first mode of amending permitted by Article V or one is not afraid of Congress standing up to a Convention which has overstepped its mandate.

And there is more. If a childlike fear of Congress is to be

¹³Ervin, *Op. Cit.*, p. 883.

¹⁴*The Federalist*, number 85. See also Philip Kurland, Statement, in *Federal Constitutional Convention: Hearings on S. 2307 Before the Subcommittee on Separation of Powers*, Committee on the Judiciary, 90th Cong., 1st Sess. 1967, p. 233.

indulged, there are still the states. Three-quarters of these must approve any amendment. Suppose a runaway Convention. Suppose an irresponsible Congress. Will three-quarters of the states be irresponsible too? Only if we wish to frighten ourselves with bogeymen will we indulge in this fantasy.

As was said long ago by a contemporary of the original Constitution, George St. Tucker, "Nor is there any reason to fear that this provision in the Constitution will produce any degree of instability in the government. The mode both of originating and ratifying amendments (in either mode in which the Constitution directs) must necessarily be attended with such obstacles and delays as must prove a sufficient bar against light or frequent innovations."¹⁵

Obstacles and delays do abound. To obtain an amendment by the Convention route, it must be sought by two-thirds of the states, proposed to a Convention called for that purpose by Congress, adopted by the Convention, sent out by the Congress to the states, and ratified by three-quarters of the states. To a reasonable mind, this process assures such "obstacles and delays" that there is a sufficient bar to any runaway actions by a Convention, sufficient security against all genuine risks, enough locks—double or triple locks—to prevent rash, willful, lawless action on subjects beyond the scope of the congressional call to a Convention.

The Usefulness of the Convention Method

The usefulness of the states' application for a Convention may be doubted because in fact a Convention has never been called. Is application for a convention merely a way for a state legislature to blow off steam, harmlessly, without effect? In the almost two hundred years of our constitutional history there have been over 300 such applications by the states. Every

¹⁵George St. Tucker, ed. William Blackstone, *Commentaries on the Laws of England*, I, Appendix 371-372, quoted with approval in Joseph Story, *Commentaries on the Constitution of the United States*, ed. Thomas M. Cooley, (Boston, 1873), Sec. 1831.

state has made at least one.¹⁶ No doubt some of the applications were fulminations in the air without result. But at least three of the topics addressed by application were made the subjects of amendments by Congress—the limitations of presidential tenure to two terms; the repeal of Prohibition; and the direct election of senators. It is fair to say that in each case the expression of the will of the states for a Convention was a factor contributing to congressional action; and that in the case of the direct election of senators the application for a Convention was a critical factor.¹⁷

For a decade Congress had refused to amend the Constitution to take from the state legislatures the power to elect senators. The reform threatened a power bloc in the Senate. The House had proposed the amendment several times. But the Senate each time killed it by referral to a committee. In 1906, twelve states met and planned concerted action to apply for a Convention.¹⁸ The number of states calling for a Convention rapidly mounted toward the requisite number for action. In 1911 the proponents of reform laid the states' petitions before the Senate. It was at this junction that Senator Heyburn of Idaho opined that a Convention could "repeal every section" of the Constitution. Heyburn was one of the diehard reactionaries, trying to scare off the needed change. But by 1911 thirty states had applied for a Convention on direct election. In 1912 the retrograde Senate surrendered and Congress proposed the Seventeenth Amendment.

The lessons are clear: A reform that strikes at the power of Congress may only be adopted if effective pressure is generated by the states. The way of generating effective pressure is the way provided by the Founding Fathers—application by the legislatures of the states for a Convention.

¹⁶ABA Committee Report, *Op. Cit.*, p. 78.

¹⁷Edward S. Corwin and Mary Louise Ramsey, "The Constitutional Law of Constitutional Amendment," *Notre Dame Lawyer* 26 (1951) 2, p. 196.

¹⁸ABA Committee Report, *Op. Cit.*, p. 72.

The Wisdom of the Convention Method

It has been claimed that it would "trivialize" the Constitution to propose an amendment requiring a balanced budget.¹⁹ It is surprising that such a basic limitation on governmental power should be viewed as trivial. No one, presumably, regards the Sixteenth Amendment as setting up a trivial tax. It is very hard to understand how an amendment dealing with the limits of governmental expenditures is more trivial than an amendment granting one form of taxing power. It is evident to most people that the limits of government finance are fundamental to the economic stability of the nation and are as properly a subject of constitutional concern as any specific form of taxation.

Moreover, it is a misdescription to describe the balanced budget amendment as merely economic. At the heart of the amendment is the desire to restore balance to our governmental system. A balance of power as much as a balance of finances will be achieved by an amendment.

There has been a claim that a Convention would cause national trauma.²⁰ In that warning I hear the voices of those supremely content with the federal establishment as it exists, who, if they do not believe the Constitution is divinely established, at least have for the federal bureaucracy sentiments of satisfaction which they do not want disturbed by any democratic action of the people. To them the best answer, perhaps, lies in the words Abraham Lincoln delivered in his First Inaugural Address at a time of grave national peril:

I fully recognize the rightful authority of the people over the whole subject [amendment of the Constitution], to be exercised in either of the modes prescribed in the instrument itself, and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the Convention seems preferable, in that it allows amendments to originate with the people themselves; instead of only permitting them to take or reject propositions originated by others, not

¹⁹Tribe, *Op. Cit.*, p. 627.

²⁰*Ibid.*, p. 634.

especially chosen for the purpose, and which might not be precisely such as they would wish to accept or refuse . . .²¹

A method sanctioned by Hamilton, by Franklin, by Madison, by Lincoln and by Washington and by all the makers of the Constitution and invoked from time to time by every state is indeed a workable, useful, and wise way of keeping our Constitution a living instrument of the people.

The Validity of the Calls

Article V specifies that Congress shall call a Convention "on the Application of Legislatures of two-thirds of the several States." Now to be considered are the validity of the calls made to this date for a Convention to propose a balanced budget amendment; and first to be considered is the forum in which validity should be determined.

The forum. According to the principal case on the amending process, *Coleman v. Miller*, Congress is the constitutionally-authorized body to decide the validity of the state calls. In this case, where the validity of Kansas' ratification of the proposed Child Labor Amendment was at issue, the opinion of the Court by Chief Justice Hughes held that ratification was "a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."²² Concurring opinions by Justices Black and Frankfurter, joined by Justices Roberts and Douglas were even stronger. Justice Black wrote,

Undivided control of that process has been given exclusively by the Article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control, or interference at any point.²³

²¹Abraham Lincoln, "First Inaugural Address, March 4, 1861," *The Collected Works of Abraham Lincoln*, Roy P. Basler, ed. (New Brunswick, 1953), p. 269.

²²*Coleman v. Miller* 307 U.S. 433 (1939) at 450.

²³*Ibid.*, p. 459.

Justice Frankfurter wrote that it

was not for courts to meddle with matters that required no subtlety to be identified as political issues, and the political issues involved in ratification were of this kind.²⁴

Most recent cases, not specifically on Article V but on "political questions," have not changed the conclusion reached in *Coleman*. Thus, for example, in *Baker v. Carr* among the characteristics of "political questions" which the Court does not decide are "a textually demonstrable constitutional commitment of the issue to a coordinate political department" (surely the case of Article V's commitment of the amending process to Congress) and the "impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government" (again, a criterion excluding the Court if Congress has acted).²⁵ Similarly, in *Powell v. McCormack*, the Court focused on the criterion provided by the text of the Constitution.²⁶ Hence, although both the *Baker* and *Powell* cases show the Court taking up matters that were arguably political, they have reinforced rather than impaired the holding of *Coleman* that Congress is the judge.²⁷

As Archibald Cox has said in another context, discussing the superiority of Congress to Court in protecting the Fourteenth Amendment rights, "the fundamental basis for legislative action is the knowledge, experience, and judgment of the people's representatives."²⁸ If there was ever a political topic on which the knowledge, experience and judgment of the people's representatives was peculiarly valuable, it is what the great popular process of amending the Constitution requires. It is

²⁴*Ibid.*, p. 460.

²⁵*Baker v. Carr* 369 U.S. 186 (1962) at 217.

²⁶*Powell v. McCormack* 395 U.S. 486 (1969) at 548.

²⁷Compare William H. White, Note, "Article V: Political Questions and Sensible Answers," *Texas Law Review* 57 (1979) 7, pp. 1263-1265.

²⁸Archibald Cox, "Foreword: Constitutional Adjudication and the Promotion of Human Rights," *Harvard Law Review* 80 (1966) 1, p. 105.

reasonable to conclude that the first and last judge of the validity of the calls of the states will be Congress.

This conclusion is of importance in determining their validity because it is fair to say that the judgment of Congress will be less technical and more commonsensical than a judicial judgment might be. Even such a foe of a Convention as Professor Gunther concedes that the validity of the calls should not be decided in a hairsplitting way. "[W]hat could do more," he writes, "to reinforce the feeling of distrust of Washington that underlies the balanced budget campaign than to have Congress strike, one by one, the applications before it, on various technicalities?"²⁹ It is a fair assumption that Congress, recognizing that what is at stake is a popular process of overcoming deficiencies and correcting grievances, will judge in a way which will not impede the process but will help to make it work.

Time Limits. The first question Congress must address is whether any calls have lapsed. Mississippi's was issued in 1975.³⁰ Will it be good after seven years? Congress has the power to fix seven years as a period in which ratification must occur, as it did in proposing the Prohibition Amendment, and the Supreme Court has observed that this period was reasonable in order that approval of an amendment be relatively contemporaneous in the approving states.³¹ Nonetheless, the Court has also noted that it is within the province of Congress to allow a longer period for amendment, and that Congress alone is the judge of what is a reasonable time. To judge, Congress needs to make "an appraisal of a great variety of relevant conditions, political, social, and economic," and this judgment will naturally vary with the times and with the issue.³² There is nothing which would constrain Congress to treat a call as lapsing after seven years. Just as Congress formally extended

²⁹Gunther, *Op. Cit.*, p. 7.

³⁰125 Cong. Record at S. 1308 (February 8, 1979).

³¹*Dillon v. Gloss* 256 U.S. 368 (1921) at 375-376.

³²*Coleman v. Miller* 307 U.S. at 453.

the time for ratifying the Equal Rights Amendment beyond seven years, so it has the discretion to treat the Mississippi request for a Convention as valid after 1982. As economic, political, and social conditions are not substantially different now than they were in 1975, it would be reasonable for Congress to do so.

Addressee. A second point Congress must judge is the validity of calls made to a variety of addressees. Balanced budget calls have been addressed to the President, the Vice President, and various committees of the Congress as well as the Congress itself.³³ The North Dakota call is addressed to no one in particular but simply says that "we . . . call upon the people of the several states for a Convention . . ."³⁴ Does the addressee, or lack of addressee, affect validity?

Here a commonsense approach is to be preferred. The relevant question is, "Does a state intend to start the amending process under Article V?" If that is the state's intent, the etiquette observed is irrelevant. The Constitution itself is vague as to addressees. It mentions none. It does speak of "the Application of the Legislatures," but although "applications" is a word often used by commentators to describe the individual states' initiatives under Article V, the Constitution itself speaks in the singular, using "Application" only to describe the end product of initiatives or calls of two-thirds of the states.

It is evident from the Constitution that the states must ask in a way that Congress hears. But the Constitution is not a book of manners in the style of Emily Post, Amy Vanderbilt, or Tish Baldrige. The particular addressee is not crucial as long as the message is communicated to Congress.

"Publication in the *Congressional Record*," one commentator has observed, "serves as a form of official notice that Congress has received the application."³⁵ Surely there is no

³³Dwight W. Connely, "Amending the Constitution: Is This Any Way to Call for a Constitutional Convention?", *Arizona Law Review* 22 (1980) 4, p. 1031.

³⁴125 *Cong. Record* S 1310 (February 8, 1979).

³⁵Connely, *Op. Cit.*, p. 1031.

more public way of notifying Congress that a state has voted to ask for a Convention. All the balanced budget calls by the states have in fact been published in the *Congressional Record*.³⁶ When three more states vote to call and their requests are published in the same journal, "Application" will have been made.

Majorities. The timeliness of a state call and its addressee are essentially procedural questions. A third question of the same kind is the nature of the vote in the state legislature requesting the Convention. It has been observed that the vote in the Colorado Senate for the balanced budget Convention was oral. It has been argued that the lack of a written record is grounds for rejecting the vote because Congress has no basis for determining "the number of Colorado state senators subscribing to the resolution."³⁷ The implicit assumption in this argument is that Congress must set a minimum, such as an absolute majority of all state senators for a state resolution to be valid. But this assumption and the argument based on it confuse two things—Congress's power to determine validity and a uniform federal rule for all resolutions.

Congress has the power to determine validity,³⁸ but it is dealing with states which are recognized by the Constitution itself as being, in many respects, distinct sovereignties with the federal union. In petitioning for a Convention, the states are performing a governmental function which, as Madison and Mason indicated, was meant to be substantially free of congressional obstruction. Consequently, it would be counter-constitutional for Congress not to respect the modalities which each state has found appropriate to determine its own legislative will.

Specifically, to take the case of Colorado, if a voice vote satisfies the Colorado legislature as a way of voting on an

³⁶See Walter E. Dellinger, "The Recurring Question of the 'Limited' Convention," *Yale Law Journal* 88 (1979) 8, p. 1623.

³⁷Connely, *Op. Cit.*, p. 1026.

³⁸See *Leser v. Garnett* U.S. 130 (1922). (In ratifying an amendment a state performs a federal function).

amendment, there is little to be gained by Congress imposing a different standard. For Colorado, a majority suffices; it does not matter that it is only a majority or a quorum. For Congress to reject this vote would be for Congress to say that a higher majority is needed—a majority of the membership. Congress does not use full membership as the basis for determining the number in Congress required to approve an amendment. It would be unreasonable to impose such a requirement on the fifty states. And it would be profoundly disrespectful to the states to do so.

As for uniformity, sufficient uniformity exists if the federal rule is: A Convention call is valid if it has been adopted by a state legislature in compliance with the rules for valid action by that legislature. Obviously such a simple rule means that an act by one branch of a legislature will not be a valid call. Obviously the rule means that legislatures which can regularly adopt resolutions without gubernatorial approval can do so here. But it also means that some states will act by majority votes and some by higher margins. Congress in its plenary power to pass judgments on validity can and should find both standards valid.

Invalidating content? Beyond procedure, there are questions of content. Two kinds of questions press in particular as concerns the balanced budget calls. Are certain calls to be invalidated because they should be characterized as "conditional?" Are all the calls to be catalogued by the language they employ and only those calls using identical language to be counted together as asking for a Convention on the same subject?

The argument is made by Walter E. Dellinger, Professor of Law at Duke University Law School, that a state call for a Convention for "the sole and exclusive purpose" of proposing a particular amendment is invalid. A substantial number of the calls for a balanced budget Convention are of this character. All are invalid, according to Professor Dellinger. His reason is that they "call only a Convention shackled by constraints that Congress has no power to impose, and they expressly or by implication oppose the calling of a Convention

on any other basis."³⁹ In other words, these calls are conditional, and conditional upon terms which cannot be imposed on Congress. The conditions being impossible to meet, the calls themselves fail.

Professor Dellinger's argument is learned and ingenious but shows little trace of common sense. Professor Dellinger seems not disappointed in believing that most legislators are fools doing foolish things which he is sharp enough to point out. He achieves this superiority by being super-technical and ignoring the basic requirements of the Constitution which sets up the popular process of amendment.

The calls for a Convention for the sole and exclusive purpose of proposing a particular form of balanced budget amendment are not to be read with the sharp eye and narrow vision of a conveyancer. They are calls for a Convention on a particular topic—a balanced budget—and not on some other topic such as gun control or nuclear weapons. But they cannot be effectively more specific than the nature of the amending process permits. As virtually everyone, including Professors Black and Gunther, has admitted, a Convention is a deliberative body, not a registry recording documents. Necessarily it will discuss, debate, and ultimately put in final form the amendment it will propose for adoption. As Professor Black stingingly remarks, a Convention to perform a merely ministerial function is "a bit of foolishness one can by no stretch of fancy think the Constitution calls for."⁴⁰ But apparently both he and Professor Dellinger think what is beyond the stretch of fancy is what many legislatures have done. Common sense repudiates this interpretation.

Common sense says that the legislatures have called for a balanced budget Convention. Many legislatures have even indicated in strong and peremptory words the exact language they expect such a Convention to adopt. But by the very nature

³⁹Dellinger, "Who Controls a Constitutional Convention? — A Response," *Duke Law Journal* (1974) 4, p. 1001.

⁴⁰Black, *Op. Cit.*, p. 644.

of a Convention, it cannot be confined to mere mechanical recording of the language of the call. Limited to a particular topic by "the Application" of the states and the terms set by Congress, any Convention will be able to write the precise language of the amendment on the subject for which it is called. Whatever exhortations or conditions precedent or conditions subsequent the states insert, when they ask for a Convention they ask for a body with this degree of flexibility.

The legislature of Delaware in a resolution accompanying its call declares that it "interprets Article V to mean" that a Convention "would not have the power to vary the text" or "to propose other amendments on the same propositions." This statement by the legislature is mere opinion, not a part of its call, and it must be disregarded since the nature of any Convention is such as to require deliberation and drafting. It is a statement which is surplusage, not a condition invalidating the call by Delaware. Similarly the less explicit but analogous attempts of other legislatures to dictate a text must be regarded not as creating invalid conditions but as conveying legislative opinion without binding force.

There is, however, one kind of condition which is not so narrow as to be ineffective. It is the kind adopted by Nevada that "this legislature conditions this request upon the Congress of the United States establishing appropriate restrictions limiting the subject matter of a Convention called pursuant to this resolution to the subject matter of this resolution, and if the Congress fails to establish such restrictions, this resolution has no effect and must be considered a nullity."⁴¹ This condition merely expresses what is the duty of Congress in calling a Convention in response to "the Application" of the legislatures. It cannot go beyond the Application. As Nevada adds nothing to the constitutional duty already incumbent on Congress, this condition is effective and harmless.

In the same way Utah has provided that its call is to be counted "only if the Convention is limited to the subject

⁴¹125 *Cong. Record* S 1309 (February 8, 1979).

matter of this Resolution;" and North Carolina has provided that its call is to be "deemed rescinded in the event the Convention is not limited to the subject matter of this application."⁴² These specifications accomplish what Nevada accomplishes. They restrict Congress to its duty.

Several states, however, have used even more precise and peremptory language. Colorado, for example, after calling for a Convention "for the specific and exclusive purpose of proposing an amendment . . . prohibiting deficit spending," further resolved "that this application and request be deemed null and void, rescinded and of no effect in the event that such Convention not be limited to such specific and exclusive purpose."⁴³ Idaho called for a Convention with similar language as to nullity and rescission if the Convention were not limited "to such specific and exclusive purpose."⁴⁴ Resolutions of this kind have furnished Professor Dellinger with ammunition. They ask, he says, for unconstitutionally narrow Conventions—Conventions limited to proposing only the exact text the legislature has approved in its call. Consequently, to use his words, they "simply self-destruct."⁴⁵

These resolutions do self-destruct if Congress fails to limit the Convention to the sole and exclusive purpose of proposing a balanced budget amendment. Such is their intent and design. But they do not self-destruct in the sense meant by Professor Dellinger, who treats them as self-destructive at the very moment of their adoption. His mistake is to read them with a literalism which does violence to their sense and purpose.

Read in a fair way, these resolutions require Congress to call a Convention for the sole and exclusive purpose of proposing a balanced budget amendment. They are limitations on the subject not the verbatim text. They ask in substance what the

⁴²124 Cong. Record S 2363 (March 8, 1979) and S 1123 (February 6, 1979).

⁴³*Ibid.*, S 1306 (February 8, 1979).

⁴⁴*Ibid.*, S 1932 (March 1, 1979).

⁴⁵Dellinger, "The Recurring Questions," p. 1638.

resolutions of North Carolina and Utah ask. Professor Delinger admits as much for he treats them alike as invalid.⁴⁶ But the North Carolina and Utah limitations are valid. It would put too much weight on technical words to say that Colorado and Idaho have acted invalidly because they used a different formula. We are not construing real property law or eighteenth century codes of pleading. When in substance what is clear is a demand for subject limitations, the exact words chosen should not be pressed to the point that the basic request is destroyed.

Similarity of subject. How close in content do the calls have to be in order for them to be on the same subject? The question in a sense has been answered by the foregoing discussion. The states are asking Congress to call a Convention, not register a document. The calls are close enough because a reasonable person will have no difficulty in saying that they deal with the same matter.

Florida has asked Congress to call a Convention "for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto."⁴⁷ Georgia, Iowa, Louisiana, New Hampshire, and Oregon have used virtually identical language, as has North Carolina except that it refers to a balanced budget "in the absence of a national emergency." The slight variations in the text produce no change in the subject.

Alabama has asked for a Convention "for the specific and exclusive purpose of proposing an amendment to the Federal Constitution requiring in the absence of a national emergency that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated revenues for that fiscal year."⁴⁸ Similar calls have been made by Alaska, Arizona, Arkansas, Idaho, Indiana, Kansas, Nebraska, Nevada, New Mexico, Oklahoma,

⁴⁶*Ibid.*, pp. 1637-1638.

⁴⁷*Cong. Record* S 1307 (February 8, 1979).

⁴⁸*Ibid.*, S 1306 (February 8, 1979).

Pennsylvania, South Dakota, Texas, Utah, and Virginia. These states agree with each other. No reasonable person would doubt that the language they have used designates the same topic which Florida and her sister states have designated by the phrase "balanced budget."

Several states have been slightly more individual in their wording. Thus Colorado asks for a Convention to propose an amendment "prohibiting deficit spending except under conditions specified in such amendment." Delaware asks consideration of an amendment specifying that "the costs of operating the Federal Government shall not exceed its income during any fiscal year, except in the event of declared war."⁴⁹ Maryland and Wyoming add that appropriations may not exceed revenues "excluding any revenues derived from borrowing."⁵⁰ Mississippi adds that the national debt shall be repaid and not increased.⁵¹ South Carolina calls for a Convention for "proposing an amendment" and then gives the substantial text in a separate resolution.⁵² Tennessee says the amendment is to read "substantially" in a form that it then gives.⁵³

Any trained legal observer will pick up these differences in form and expression. They do not establish any substantial differences as to the subject with one exception. Mississippi has added the subject of reduction of the national debt. This is a second and different subject in which the other states have expressed no interest. Mississippi's call here has not been seconded. But its call for a Convention on debt reduction is not integral to its call for a Convention on a balanced budget. It may be safely disregarded without impugning the effectiveness of Mississippi's call for a balanced budget amendment.

It is true that there is a variation as to the exceptions the states propose, of which the greatest variant is the Delaware

⁴⁹*Ibid.*, S 1307 (February 8, 1979).

⁵⁰*Ibid.*, S 1308 and S 1313 (February 8, 1979).

⁵¹*Ibid.*, S 1308 (February 8, 1979).

⁵²*Ibid.*, S 1311 (February 8, 1979).

⁵³*Ibid.*, S 1312 (February 8, 1979).

proposal limiting the exception to "the event of declared War." Clearly everyone recognizes that it is impossible to make a balanced budget requirement so absolute that it has no exceptions. Just as clearly the extent of the exceptions are precisely what a Convention would have to determine. Variation in the exceptions offered creates no change in the subject matter of the calls.

In summary, any reasonable person reading the thirty-one calls of the states would observe the difference in style, in form, in emphasis and exception which are entirely expectable when the people of the different states express themselves. But unless the reasonable person were to change into a Scrooge-like scrivener, he or she would have not the slightest trouble in perceiving that all thirty-one states are deeply troubled by deficit federal financing and all thirty-one states ask for a Convention which will provide an amendment mandating a balanced budget as a federal norm. Congress, being composed of reasonable men and women familiar with political processes, will have no trouble in concluding that it has before it thirty-one valid calls for a balanced budget Convention.

Conclusion

A decade after the Constitution had been in operation, Thomas Jefferson wrote, "I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution; I mean an additional article, taking from the federal government the power of borrowing."⁵⁴ Jefferson's "single amendment" is the balanced budget amendment. In Jefferson's view, its enactment was necessary to bring the "administration of our government" back to the "genuine principles" of the Constitu-

⁵⁴Paul L. Ford, ed., *The Writings of Thomas Jefferson* (New York, 1896), Vol. 7, p. 310. (Jefferson to John Taylor, November 26, 1798).

tion. It's enactment is necessary now to restore the genuine principles of the Constitution.

Article V has given the people of the United States two ways of amending their Constitution. The second is of particular value when Congress has motivation not to use the first. Now, when there is wide popular demand for a balanced federal budget, thirty-one states have wisely and validly invoked the second way. When three more states join their sister-states' call, Congress will be under a preemptory duty to call a Convention limited to consideration of an amendment directed to balancing the budget.⁵⁵

⁵⁵See Alexander Hamilton, *The Federalist* No. 85, *Op. Cit.*, p. 546.

APPENDIX

**The Count on The 31 State Legislatures Which Have Passed
A Resolution Calling for A Constitutional Convention on
A Balanced Federal Budget Amendment**

The 31 state legislatures which have passed balanced budget amendment resolutions are:

Alabama	HJR 227, Act 302	1976
Alaska	HJR 17	1982
Arizona	SJR 1002, HCM 2003	1979, 1977
Arkansas	HJR 1	1979
Colorado	SJM 1	1978
Delaware	HCR 36	1975
Florida	Sen. Mem. #234, HM 2801	1976, 1976
Georgia	Res. Act #93, HR #469-1267	1976
Idaho	HCR 7	1979
Indiana	SJR 8	1979
Iowa	SJR 1	1979
Kansas	SCR 1661	1978
Louisiana	SCR 4, SR 73, HCR 269	1979, 1978
		1975
Maryland	SJR 4§, Md JR 77*	1975
Mississippi	HCR 51	1975
Nebraska	LR 106	1976
Nevada	SJR 8, SJR 2	1979, 1977
New Hampshire	HCR 8	1979
New Mexico	SJR 1	1976
North Carolina	Resolution 5	1979
North Dakota	SCR 4018	1975
Oklahoma	HJR 1049	1976
Oregon	SJ Mem #2	1977
Pennsylvania	HR 236	1976
South Carolina	SCR 1024, SCR 670	1978, 1976
South Dakota	SJR 1	1979
Tennessee	HJR22	1977
Texas	HCR 13, HCR 31	1978, 1977
Utah	HJR 12	1979
Virginia	SJR 36	1976
Wyoming	HJR 12§, JR 1*	1977

Certified copies of these resolutions are on file at the National Taxpayers Union, 711 Maryland Ave., NE, Washington, DC 20002

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APPENDIX B

The Convention Method of Constitutional Amendment—Its Meaning, Usefulness, and Wisdom*

JOHN T. NOONAN, JR.**

One of the great American innovations at the founding of our Republic was a Constitution that could be amended. At the time "it was heresy to suggest the possibility of change in governments divinely established and ensured."¹ To provide in the written instrument itself for change was to take the position in advance that experience would show defects, that change would sometimes be desirable and good, and that the people of the next generation or the twelfth generation later could be as wise and trustworthy as the founding fathers themselves.

THE MEANING OF THE METHOD

Two methods of amendment were provided. One was dependent on the initiative of Congress, the other on the initiative of the states. The methods were intended to be parallel ways of changing the Constitution. In Madison's words in *The Federalist*, the article on amendments "equally enables the general and the State governments to originate the

* Revised testimony before the Committee on Ways and Means of the California Assembly, February 15, 1979.

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1. R. MERRIAM, *THE WRITTEN CONSTITUTION AND THE UNWRITTEN ATTITUDE* 6 (1931).

amendment of errors."² It was recognized that those in power in the national government might have a disinclination to give up any of their prerogatives. It was deemed particularly necessary, therefore, to leave open the initiative of the states. Hamilton pointed out, in his final plea for ratification in *The Federalist*, that the second method of amendment had been provided in order that Congress would be under a "peremptory" duty to call a Convention when two-thirds of the states made application for one.³

You have been told that the second method of amendment provided for by Article V of the Constitution is unworkable; that it is "shrouded in legal mystery of the most fundamental sort;" that it is full of "fundamental incertitudes;" that it will lead to confrontations between branches of government of nightmarish dimensions;" and that its invocation will lead to trauma for the country.⁴ Reading these prophecies of doom, I was reminded of what an inveterate Tory might have pronounced in 1789 as our new Constitution was launched. Every word—legal mystery, fundamental incertitudes, confrontations between branches of government—could have been used and would in some sense have been true; but what distrust of popular government it would have been to act on such gloomy guesses! What distrust it shows today both in the wisdom of the founding fathers who gave us Article V and in ourselves to predict that we cannot safely use the second great mode of amendment offered by our Constitution.

The principal objection offered to the convention method is that a Convention may be a runaway body enacting amendments on all kinds of matters not within its call. In the most flamboyant expositions of this danger it is even suggested that the Convention could repeal the Bill of Rights. Is there anything at all to such fears? The language of the Constitution is clear. Congress is to call a Convention on the application of the legislatures of the states. Congress is not free to call a Convention at its pleasure. It can only act upon the states' application; and if Congress can only act upon their application, it cannot go beyond the purpose for which the states have applied. If they apply for a Convention on a balanced budget, Congress must call a Convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of

2. THE FEDERALIST NO. 43, at 315 (Madison) (B.F. Wright, ed.)

3. THE FEDERALIST NO. 85, at 546 (Hamilton) (B.F. Wright, ed.)

4. Tribe, *Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment*, 10 PAC. L.J. 627 (1979).

Congress on the subject that the states have set out and for which Congress has called the Convention.⁵

This understanding of the Article is confirmed by both Madison and Hamilton. Madison says explicitly that the national and state governments have equal powers of amendment.⁶ It is obvious that the powers are very unequal if the national government can propose individual amendments but the states can only propose amendment of the whole Constitution. If Congress can propose one amendment at a time, so can the states. Hamilton is, if anything, even more explicit. He says in so many words that every amendment

would be a single proposition, and might be forwarded singly. There would then be no necessity for management or compromise, in relation to any other point—no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment that amendment must infallibly take place.⁷

There is absolutely nothing in this authoritative exposition that suggests that the states can only call a general Convention where the whole Constitution will be on the table to be bargained over. What is contemplated and assured by Article V is entirely different: two-thirds of the states agree on an amendment and "that amendment must infallibly take place."⁸

There are no mysteries here, no fundamental incertitudes unless one is not willing to trust Congress and the Convention it calls to act lawfully and constitutionally. Of course one can always imagine bad men usurping the functions of a Convention as bad men could act as usurpers in Congress or the Executive Branch or the Judiciary. But the Constitution is not addressed to men of bad will. It is addressed to the great law-abiding American people. It assumes that responsible people will act in accordance with what the Constitution provides. If they do so, there can be no runaway Convention.

It has been argued that states can *only* call general conventions, that any lesser and more specific call is void. Proponents of this argument

5. See the conclusions of the ABA SPECIAL CONSTITUTIONAL CONVENTION STUDY COMMITTEE, AMENDMENT OF THE CONSTITUTION BY THE CONVENTION METHOD UNDER ARTICLE V 17 (1974) [hereinafter cited as ABA COMMITTEE]. Among the members of this committee reaching this unanimous conclusion were United States Federal District Court Judge Sarah Hughes and Dean Albert Sacks of Harvard Law School. The same conclusion is reached by Professor Paul G. Kauper of the University of Michigan Law School, in *The Alternative Amendment Process: Some Observations*, 66 MICH. L. REV. 903, 912 (1968) and by Note, *Proposed Legislation on the Convention Method of Amending the United States Constitution*, 85 HARV. L. REV. 1612, 1629 (1974).

6. THE FEDERALIST NO. 43, at 315 (Madison) (B.F. Wright, ed.).

7. THE FEDERALIST NO. 85, at 545 (Hamilton) (B.F. Wright, ed.).

8. *Id.*

feel themselves wiser than the legislatures of all the states which have acted under Article V in this century. All of them, according to this theory, have done vain acts. I cannot believe that only these few know what the Constitution means. I cannot believe that Congress or the Supreme Court would adopt this ingenious and unique exposition, which defies Hamilton and Madison's contemporaneous expositions of the meaning.

It has been argued that it is not bad men, but it is reasonable men who could expand the subject of the proposed Amendment to include matters remote from the intention of the proposers. I do not doubt the ability of lawyers—and lawyers are preeminently reasonable men—to connect one subject with another: they are trained in the art of sewing seamless webs, just as they are trained in taking such webs apart. But this sagacious argument goes too far. If, with a show of reason, almost any topic can be linked with any other topic, a limited Convention is never possible. In a subtle form, this argument restates the earlier discussed position: only general Conventions may be asked for by the states. But this conclusion, contra Hamilton and Madison, would leave the states helpless to mandate action by Congress on the specific grievances.

The proper answer to this latter argument, therefore, must be that while reason can connect all things, when a Convention is called on a specific subject, all those subjects which are tangential and remote from the main issue must be eschewed by the Convention delegates. It is not beyond human wit to draw lines or beyond human sense to observe them. If the delegates wander, Congress need not transmit their wanderings. If irrelevancies are appended by a Convention, the states need not ratify them. If the states vote on matters not within the scope of the call, the Supreme Court can strike the surplusage. There is a triple check, a triple lock, of Congress, States, and Court. These bodies are surely competent to confine a Convention to the matter on which it was asked to act. The Convention is as safe and stable an instrument of governmental power as any other of the great institutions set up by the Constitution on a fundament of trust in the people.

THE USEFULNESS OF THE CONVENTION METHOD

The usefulness of the states' application for a Convention may be doubted because in fact a Convention has never been called. Is application for a Convention merely a way for a state legislature to blow off steam, harmlessly, without effect? In the almost two hundred years of our constitutional history there have been over 300 such applications

1979 / *The Convention Method*

by the states; every state has made at least one.⁹ No doubt some of the applications were fulminations in the air without result. But at least three of the topics addressed by application were made the subjects of amendments by Congress—the limitation of presidential tenure to two terms; the repeal of Prohibition; and the direct election of senators. It is fair to say that in each case the expression of the will of the states for a Convention was a factor contributing to congressional action; and that in the case of the direct election of senators the application for a Convention was a critical factor.¹⁰

For a decade Congress had refused to amend the Constitution to take from the state legislatures the power to elect senators. The reform threatened a power bloc in the Senate. The House had proposed the amendment several times. But the Senate each time killed it by referral to a committee. In 1906, twelve states met and planned concerted action to apply for a Convention.¹¹ The number of states calling for a Convention rapidly mounted toward the requisite thirty-six. In 1911 the proponents of reform laid the states' petitions before the Senate. It was at this junction that Senator Heyburn of Idaho, who Professor Tribe invokes as a constitutional authority, opined that a Convention could "repeal every section" of the Constitution. Heyburn was one of the diehard reactionaries, trying to scare off the needed change. But by 1911 thirty states had applied for a Convention on direct election. In 1912 the retrograde Senate surrendered and Congress proposed the seventeenth amendment.

The lessons are clear: A reform that strikes at the power of Congress may only be adopted if effective pressure is generated by the states. The way of generating effective pressure is the way provided by the founding fathers—application by the legislatures of the states for a Convention.

THE WISDOM OF THE CONVENTION METHOD

It has been said that it would "trivialize" the Constitution to propose an amendment requiring a balanced budget.¹² I am surprised by this view. No one, I should suppose, regards the sixteenth amendment as setting up a trivial tax. It is very hard to understand how an amendment dealing with the limits of governmental expenditures is more trivial than an amendment granting one form of taxing power. It is

9. ABA COMMITTEE, *supra* note 5, at 69.

10. See Corwin & Ramsey, *The Constitutional Law of Constitutional Amendment*, 26 NOTRE DAME LAW. 185, 196 (1951).

11. ABA COMMITTEE, *supra* note 5, at 72.

12. Tribe, *Issues Raised by Requesting Congress to Call a Constitutional Convention to Propose a Balanced Budget Amendment*, 40 PAC. L.J. 627 (1979).

evident to most people that the limits of governmental finance are fundamental to the economic stability of the nation and are as properly a subject of constitutional concern as any specific form of taxation.

There has also been a claim that a Convention would cause national trauma. In that warning I hear the voices of those supremely content with the country as it is, who, if they do not believe the Constitution is divinely established, at least have for the present system sentiments of satisfaction which they do not want disturbed by any democratic action of the people. To them the best answer, perhaps, lies in the words of Abraham Lincoln speaking at a time of grave national peril and giving his first inaugural address:

I fully recognize the rightful authority of the people over the whole subject [amendment of the Constitution], to be exercised in either of the modes prescribed in the instrument itself, and I should under existing circumstances, favor, rather than oppose, a fair opportunity being afforded the people to act upon it.

I will venture to add that, to me, the convention mode seems preferable, in that it allows amendments to originate with the people themselves, instead of only permitting them to take, or reject, propositions, originated by others, not especially chosen for the purpose, and which might not be precisely such, as they would wish to accept or refuse.¹³

A method sanctioned by Lincoln, by Hamilton, by Madison, by Washington and Franklin, and by all the makers of the Constitution, and invoked from time to time by every state, is indeed a workable, useful, and wise way of keeping our Constitution a living instrument of the people.

13. A. LINCOLN, *First Inaugural Address, March 4, 1861*, in *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 269-70 (1953).

Senator HATCH. Next will be Mr. Gerald McEntee. We are happy to have you here today, and look forward to taking your testimony at this time.

STATEMENT OF GERALD W. McENTEE, PRESIDENT, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, WASHINGTON, DC, ACCOMPANIED BY STEVE SILBIGER, LEGISLATIVE ANALYST

Mr. McENTEE. On my left is Mr. Steve Silbiger, one of the legislative analysts working the Hill in Washington, DC.

Senator HATCH. Very effectively, I might add, also.

Mr. McENTEE. Mr. Chairman, my name is Gerald W. McEntee. I am the president of the American Federation of State, County and Municipal Employees, and I am also a vice president of the AFL-CIO. I am here today representing the 15 million members of the AFL-CIO.

In 1982, the AFL-CIO executive council took the extraordinary step of setting up an ad hoc committee of the executive council to educate our members and the general public to the dangers inherent in amending the U.S. Constitution to require an annual balanced Federal budget. At that time AFL-CIO President Kirkland and the executive council appointed me chairman of the ad hoc committee, and it is in that capacity that I appear here today. Although I represent a public employee union, I am here representing millions of private sector members of the AFL-CIO, who, if the recent recession is any guide, will be the hardest hit by the depression likely to be caused by the implementation of a balanced budget amendment.

The AFL-CIO is unalterably opposed to a constitutional amendment mandating a balanced budget, or any mechanical formula, that would straitjacket the constitutional powers of the Congress to "provide for the common defense and promote the general welfare."

Our Nation's Founders, who drafted the Constitution, understood that they were constructing a framework for enduring Government, and not writing a system of expenditure and revenue accounts that would become quickly outdated by commercial and technological progress, and shifting economic and political trends. The drafters of the Constitution created a system of democratic Government designed to meet the needs of the people, and left the definition of these needs to the representative Government they had created.

The enumerated powers given to the democratically elected legislature, the Congress, are, therefore, stated in general terms and supplemented by the authority "to make all laws which shall be necessary and proper for carrying out those powers." The restrictions on those rights are narrow and few; and, almost exclusively, such restrictions guarantee individual rights and equal treatment.

Our Constitution has endured because it embodies only those ideas that we as a Nation have concluded are fundamental and immutable principles which should be safeguarded against temporary legislative majorities. The proposition that the Federal Government of the United States should always maintain a balanced

budget is not such a fundamental principle that it should be sanctified by the Constitution and placed above the democratic will of the people and their elected representatives.

A balanced Federal budget may be a worthy priority. I personally believe that in an overheated economy deficit reduction can have a salutary effect on prices and that inordinate deficits can take needed capital away from investments. I suppose these views put me in the center of the Reagan Cabinet, somewhere between the President's Secretary of the Treasury and his Chairman of the Council of Economic Advisors.

Even though I believe that a balanced budget is at times a worthy goal, I do not believe it should be given greater importance than other public priorities such as full employment, education for our children, Social Security, and medicare for our elderly, or provision for our common defense.

I believe that the American people share my sense of priorities. Americans, while they would prefer to have the Federal budget in balance, also realize that a mathematical clearing of balances is not as important as a healthy economy, a strong national defense, the enhancement of opportunity for our young, or the provision of basic necessities for our needy, whether they be the aged, the infirm, or just unemployed victims of misguided economic policies.

The authors of Senate Joint Resolution 5 would reverse these priorities. They would place a requirement for a balanced budget in our Constitution which would allow a political minority to force the implementation of such a requirement, regardless of its effects on the goals and the program that I have just mentioned.

The tradeoff between a balanced budget amendment and a healthy economy and needed public programs are very real, and I might add, very frightening. As you know, most economists have forecasted dire economic results if such an amendment ever were implemented.

In the spring of 1982, we in AFSCME, attempted to quantify the economic and budgetary consequences of Senate Joint Resolution 5 by preparing an econometric simulation using the highly respected Data Resources Inc. [DRI] model of the U.S. economy. The simulation assumed implementation of the amendment by fiscal year 1985. The results, covering 1985 to 1987, reveal a record of economic devastation.

The number of unemployed people would increase by 2.65 million in 1987, pushing the jobless rate back into double digits.

The gross national product would be cut by \$519 billion between 1985 and 1987, resulting in a nearly 6-percent decline in the standard of living for the average American.

Federal outlays for all programs would be cut by \$116 billion in fiscal year 1985, \$125 billion in fiscal year 1986 and \$163 billion in fiscal year 1987, endangering all Federal programs.

State and local tax revenues, due to a drop in unemployment and output, would be reduced by an estimated \$50 billion in 1987, necessitating unprecedented increases in property and sales taxes and dangerous cuts in basic services, such as fire, police, and education.

These results are similar to the economic projections of a study done by Senator Moynihan using the Wharton econometric model. The results also understate the effects of the balanced budget

amendment. Our study was done in the spring of 1982 when the projected deficits were less than half of what they are now estimated to be. As a result the budget cuts mandated by a balanced budget amendment are likely to be more than twice as great as our study projected, as are the likely negative economic consequences.

Our study also projected that the tradeoff for the record unemployment and the 6-percent decline in GNP would be a three-tenths of 1 percent decline in inflation. In other words, for each 1 million Americans thrown out of work, inflation would be cut by one-tenth of 1 percent.

This negligible effect of a balanced budget on inflation should come as no surprise. Our recent economic experience indicates that deficits have only a minor effect on inflation. For instance, in 1979 and 1980 inflation averaged 12 percent, while deficits averaged \$43 billion annually. In 1982 and 1983, the inflation rate will have averaged less than 4 percent, while deficits will have averaged over \$150 billion annually.

In terms of the effect of a balanced budget amendment on specific programs, obviously, no one can predict with an exact certainty the size of the cuts that will be imposed. However, we can offer some observations about the magnitude of the cuts that would be required in future deficits.

The Congressional Budget Office now estimates the 1985 to 1987 deficits to average about \$205 billion annually. To eliminate those deficits through spending reductions would require cuts far in excess of \$200 billion, since reductions in spending also cause reductions in revenues. However, for arguments sake, let us assume that each dollar of spending cuts translates itself into a dollar deficit reduction. To achieve the \$205 billion cuts would require more than the elimination of all nondefense discretionary spending. Such spending is projected to be \$162 billion in fiscal year 1985. This means that the balanced budget amendment would require massive cuts in defense and entitlement programs. Or put another way, the amendment would force cuts in Social Security, medicare, and veterans benefits, because without cuts of tens of billions of dollars in these programs the deficit could not be eliminated.

I believe it is cuts in these basic programs that are the real target of the people behind the balanced budget amendment. Early on in this administration, the President proposed severe cuts in Social Security. This year he followed this proposal with recommendations for cuts in medicare. So far his efforts have been mostly frustrated because he has been unable to muster the required congressional majority. If Senate Joint Resolution 5 should be enshrined in our Constitution, the President will have his way with these programs so long as he gets 40 percent of either House of Congress to go along with him.

In their attempt to cut these vital programs, the proponents of the constitutional amendment have perpetuated some myths about the issue. The most fallacious of these myths is that if individuals, businesses and State and local governments have to live within their means and balance their budgets, why should not the Feds?

But, Mr. Chairman, you and I know that people, businesses, States and cities do not really balance their budgets each year. They all engage in deficit financing; spending more than their

income in some years to make investments for the future. For instance, when a family takes on a home mortgage, it is running a deficit. The same is true, when a small business takes out a loan to buy a machine, or a corporation issues bonds in order to build a plant. All of these are examples of deficit financing, and all of these actions are encouraged by policies we all support.

As for States and localities, they do have requirements mandating a balanced budget. However, those requirements only apply to their operating budgets. States and cities can, and do, run deficits to make capital improvements through their capital budgets which are not counted toward balanced budget requirements. In 1983 State and local governments borrowed close to \$50 billion. If the Federal Government operated on the same basis as States and localities, its budget would have been in balance until the advent of this administration.

Finally, I would be remiss if I did not address the issue of the constitutional convention. After all, this hearing is being held in a State where a petition is being circulated to put this issue on the ballot. There are rumors to the effect that this hearing was scheduled in conjunction with the petition effort.

The matter before us here today—the desirability of a balanced budget amendment—already has been considered by the Congress. Despite a massive campaign to force this straitjacket legislation through the Congress, with dire threats of the political consequences of anyone who dared to oppose it, it was rejected and buried 2 years ago. Given the results of the 1982 election in the House of Representatives, few, if any, people believe that the amendment will be successfully resurrected in this Congress.

What is happening here is simple and clear. The forces that pushed for the constitutional amendment in the Congress; are now seeking to force a constitutional convention by action of the State legislatures.

Let me say as an American, I can think of few things more dangerous and divisive than a national convention to rewrite the Constitution. I am not a lawyer or a constitutional scholar, so I will not comment on the technical issue of whether Congress can limit the scope of a constitutional convention. However, it should be noted that the convention which gave birth to the Constitution came together to amend the Articles of Confederation and exceeded its mandate by creating a new document and establishing a new Republic from what were 13 independent and sovereign States.

It is my sense that the issue of whether Congress can limit the jurisdiction of a national convention is an open question that would have to be eventually decided by the convention itself, and the courts. This means that while the campaign for delegates to the convention is underway, the issue of jurisdiction will be open. As a result, that campaign, I guarantee you, will bring out people who could care less about balancing the budget, but who do have their own axes to grind. These people will come from the extremes of our society and the passions they will raise will not be inconsiderable. I am sure the progress we have made in terms of civil rights for women and minorities will be an issue, as will be issues involving church and state. The debates that will rage during the campaign

will polarize our society, turn Americans against each other, and encourage our enemies.

If you are worried about interest rates, how do you think the bond market is going to react to a campaign for constitutional convention delegates that has some candidates challenging our private enterprise economy and the sanctity of contracts? Interest rates do not go down during periods of political instability, and a constitutional convention is an invitation to such a period of crisis.

If you are worried about our national defense and our ability to project resolve, how do you think our foreign enemies will react to a period when Americans are tearing each other up over the most fundamental questions? No amount of defense spending increases will make up for the damage caused by a constitutional convention.

I do not believe I am being Chicken Little when it comes to describing the dangers of a constitutional convention. James Madison, the drafter of the Constitution, had the same fears. Let me quote them to you, because he stated much more eloquently than I have. James Madison said a second constitutional convention would:

Give greater agitation to the public; an election into it would be courted by the most violent partisans on both sides; it would probably consist of the most heterogeneous characters; would be the very focus of that flame which has already heated too much men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alteration popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundation of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberation of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstances, I would tremble for the result of the second.

Mr. Chairman, I too tremble about the results of the dynamic that is being created by the petitions of the State legislatures. I do not think committees of Congress should be encouraging the people who have pushed through these dangerous documents. Your time would be better spent by legislating reasonable economic programs, some of which might even actually help to reduce the deficits.

Thank you.

Senator HATCH. Thank you very much.

Our next witness will be Mr. Martyn Hopper.

Mr. Hopper, I am running out of time, and if all of the remaining witnesses can summarize, I think we might be able to finish.

STATEMENT OF MARTYN B. HOPPER, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. HOPPER. Thank you.

I would like to pledge the support of NFIB in support of balancing the budget, and I will not reiterate any of the testimony that we have given at the Federal level.

I am the director of the Government Relations for California, and so my comments specifically are related in context to California, and we certainly appreciate you taking the time out to come here today.

We represent 600,000 small businesses throughout the Nation, and 54,000 of them are in California here. All those small businesses are faced with the multitude of problems, and are all businesses

under the effect of the volatile rates in inflation in the first quarter of 1974 when NFIB began its quarterly economic report on our members, and we have consistently taken that as the most important problem.

Despite today's record high rates in inflation, our members continue to range inflation as the most important problem, and consequently eliminating highly inflationary budget deficits created by excess spending among small businesses, and that is a top priority in NFIB's top priorities.

In that regard, we would talk about Lew Uhler's National Tax Limitation Committee, and have circulated and sent out to our members this petition here in California, that will, in essence—Senator Wilson says there is no hope that the State legislature passing the resolution, and that is adding fuel to the fire, to make sure that we can put some pressure on, and I can tell you as lobbyists in Sacramento there has been a tremendous interest in this petition in California, and so without wishing to reiterate any more testimony on the merits of the balancing of the budget, I want you to know that NFIB is behind the one here in California, and will do all we can do to work with you and your office and counsel to get it passed.

Thank you.

Senator HATCH. We appreciate that, and I hope you will get out there and secure those signatures; it is important that we bring this to California. This is a key State in the overall effort for the amendment; we really think NFIB has a tremendous job in this area. You certainly have been helpful to those of us who believe, that this balanced budget amendment may be the best way to go.

Thank you so much.

Our next witness is from the California Chamber of Commerce, and will be Richard Johnson. We are happy to have you with us, as well.

STATEMENT OF RICHARD JOHNSON, CALIFORNIA CHAMBER OF COMMERCE

Mr. JOHNSON. The Chamber of Commerce in California most strongly supports the balanced budget and the initiative. I am speaking to you today as chairman of the California Chamber of Commerce Small Business Committee. Our committee along with the White House and California Conferences on Small Businesses see as one of our highest priorities the balancing of the budget so as to match spending and revenues at a reasonable amount. We are involved in business, in borrowing money, and having to repay that money. The access to capital is difficult, and its cost is unreasonably high. This, in our opinion, is caused by Government deficit spending covered by inflationary increases in the money supply.

It is noted in California that approximately 97 percent of the employers in California employ 100 people or less, and they account for 42 percent of the jobs.

Senator HATCH. Ninety-seven percent?

Mr. JOHNSON. Yes.

Senator HATCH. The employers of 100 or less? Forty-two percent of all the jobs in California?

Mr. JOHNSON. Yes. Access to capital is one of the primary needs of the small business, in order to generate and create new jobs.

A constitutional amendment is an entirely appropriate device to enact the requirement for a balanced Federal budget. The purpose of the Constitution is for the people to grant the Government certain powers to impose limitations upon their Government. Our history has proven that an outside force that is the Constitution, is necessary to make our elected representatives respect the will of the overwhelming majority of the people because our normal political process simply is not working to balance the budget.

The people and small businesses need this amendment to protect themselves from their Government's fiscal irresponsibility and institute political accountability over taxing and spending issues. This is exhibited by a recent article in a national publication that talks about the Federal Government and its deficits.

They said nothing is going to happen between now and November 1984 to cut the deficit. Congress will keep blaming Reagan for thwarting tax cut measures. Reagan will be faulting lawmakers for failure to cut spending. They went on with several more comments about why this would happen, and how difficult it is to balance the budget.

This, several speakers have commented on. I have heard numerous comments today, and over the past several years, about all the cuts that we are looking at. I think it is important that we look at where all the cuts have taken us this last decade. During the past decade the continual discussion of cuts has seen the annual Federal budget increase from \$210 billion in 1971 to an estimated \$809 billion in 1983. I think that number actually came out to around \$796 billion, and I think the deficit has increased from \$71 to \$290 billion.

Until the Federal Government is forced to balance the Federal budget, there will be no honest discussion of priorities in spending. Total spending is not being cut.

I might also comment, from an article I read yesterday in the paper, that the level of spending last year was cut in only one category, by one-tenth of 1 percent. I think the cuts we normally hear about are the cuts in proposed spending, and not what happened the prior year.

Senator HATCH. That is exactly right. They come up with a proposed budget resolution that is always higher than what it really should be, and certainly higher than the year before, and then they talk about cuts, and they might cut something out of those high projections.

Mr. JOHNSON. I think that is true of the supposed tax cuts we have had in the past 2 years.

Senator HATCH. The others will talk in terms of cuts, even though next year's budget will be bigger than last year.

Mr. JOHNSON. In fact, since supposedly we have had tax cuts, I would say to you, I do not believe it is a tax cut, it is just an elimination of an increase in the total revenues and total taxes collected, while spending continues to go up. It should be realized that the prime interest rate, borrowing rate, was approximately 1½ percent from 1937 to 1947, and from 1947 to 1957 it was about 2 percent. From 1957 to 1967 it got up to a high rate of 4½ percent.

From 1967 to 1977 it averaged about 6 percent, with one astronomical climb to about 10½ percent. Only since 1977 have we seen the astronomical increases to as high as 21 percent, as the size of the deficit has increased, so too has the prime rate.

The prime rate and borrowing rate affect agriculture and small business. Speaking as a farmer many farmers are paying more in interest cost than all the rest of the costs of growing the crops they are working on.

In 48 of the last 55 years our country has operated in the red, creating a nearly \$1½ trillion national debt, which affects the future of our children. The debt level now equals approximately \$6,000 per man, woman and child. It might also be noted that in deficit spending we are not talking about if taxes are to be collected, but we are only talking about when, and so by doing deficit spending now, taxes have been created, and we are only talking about when they will be collected.

The only certain method of balancing the Federal budget is through a constitutional amendment requiring a balanced budget annually.

You commented earlier that the amendment nearly did pass last year, but the measure was killed in the House of Representatives. If Congress will not act, it will be up to the States to pressure Congress into limiting their taxing and spending ability. Thirty-two States that have passed resolutions calling upon Congress to pass such an amendment, or convene a Constitutional Convention to consider such a measure, and only two more States are needed. We, in California are working on making California either the 33d or 34th State.

As we look at the Government some people are predicting as much as 77 percent of the available funds will be borrowed by the Government next year. Small business is effectively forced out of capital markets at these levels. In order to create new jobs and be innovative, small business needs access to capital.

I respectfully request your committee take responsible action now to pass Senate Joint Resolution 5.

Thank you very much for holding these hearings in California, and that concludes my comments.

Senator HATCH. Thank you very much for coming. The California Chamber of Commerce has been one of our best of this balanced budget; we appreciate everything you have done in assisting, and thank you for being here.

Our next witness will be Carl Jones. We are happy to welcome you to the committee.

STATEMENT OF CARL JONES, LEGISLATIVE DIRECTOR, CONGRESS OF CALIFORNIA SENIORS

Mr. JONES. I am sorry I have this cold. I understand I am limited to 3 minutes.

Senator HATCH. We would like you to summarize, if you can.

Mr. JONES. First of all, there is an omission here of one paragraph, I am representing the National Council of Senior Citizens, a national organization of senior citizens.

We believe that the quick fix measure may seem appealing at first glance, but actually what this amendment means is that Congress would be required to adopt a balanced budget before the start of each fiscal year.

Deficit spending and increases in the debt ceiling would be allowed only if approved by a three-fifths vote of Congress, and an increase in receipts in any fiscal year that is greater than the increase in the national income from the previous year would be prohibited unless the majority of Congress passed a bill solely to raise taxes.

Because this proposal would both mandate a balanced budget and sharply restrict Federal revenue, drastic cutbacks in vital social programs would be inevitable, and one of those programs would be Social Security.

If all the other needs and programs were eliminated, it would only be about 11 percent of the budget. This means that you people back there, with your hard work, would go after Social Security, and we do not believe that Social Security should be cut. We worked hard through the years to make this country what it is. It is the people that are loaning money to the Commie countries, and then we have to go over and bail them out. They are taking our work and money to do this, and you know who I am speaking about, the bankers.

Senior citizens need health care, and national health plans, the same as the others we are pulling out by the bootstraps, and we do not get it, yet our bankers who loan these countries money get defended.

There are other areas where money is being spent, that should not be. We believe in a balanced budget, but we do not think you can balance the budget by just talking about it. You have to take an active part with Congress and the Senate, they are elected to do the job, and not saddle it off and come home and say, I will do this because the law requires it, and the Constitution requires it. We do not think you should be given that.

I admit I have gotten away from my text.

Senator HATCH. Well, we will put the complete text in the record. Please do not worry.

Mr. JONES. The amendment would not only permit Congress and the President to make these cuts, it would demand they do so, even if restrictions in spending were spread evenly across the board, over \$40 billion that would be cut from the Social Security.

If the American people want a balanced budget, Congress should not renege on the basic responsibility to enact one. But, the fact is, the American people are divided on this issue, and especially when they understand how it is to be achieved, and so Congress is divided as well.

You will recall that President Reagan's fiscal 1984 budget proposal projected a deficit of \$181.45 billion. After weeks of deliberation, the Senate reduced it to \$178.60 billion. And the House figure was \$174.45 billion. Just prior to Christmas recess in November, the Congress produced a number of deficit reduction packages to put them in compliance with the reconciliation on the budget resolution.

Yet every proposal that was attempted to bring the deficit under control, by cutting military spending and raising taxes, and domestic spending was rejected by the White House.

How can we cement, in the Constitution of the United States, the most sacred document of the Government, an inflexible policy that the branches of our Government have been unable to achieve through the normal democratic process. No economic theory has been put forth in the past that has had such unqualified success that it should be incorporated in the U.S. Constitution.

I believe this amendment will undermine America's faith in the Constitution, which is a statement of principles by which we stand and should not be left to the politicians with whom we so often disagree.

Thank you.

Senator HATCH. Thank you. We appreciate that; I agree with you that if the Congress and people had the guts to do what should be done, we would do so in the budget process, but we are not doing it. That is why so many of us feel that we need that amendment, but I appreciate your testimony. It is going to be placed into our record. We appreciate the effort you have put forth today to be here.

Thank you.

Our next witness, representing the California Farm Bureau Federation, is John Gamper.

STATEMENT OF JOHN GAMPER, ASSOCIATE DIRECTOR, GOVERNMENTAL AFFAIRS, CALIFORNIA FARM BUREAU FEDERATION

Mr. GAMPER. Mr. Chairman and members of the committee, my name is John Gamper, associate director of governmental affairs with the California Farm Bureau Federation. I am pleased to be here today to present the views of the farm bureau with regard to the general subject of fiscal responsibility and the specific matter of Senate Joint Resolution 5, the proposed balanced budget constitutional amendment.

The California Farm Bureau Federation is the largest farm organization in California, representing more than 100,000 member families, and is a member of the American Farm Bureau Federation. Economic policy has a significant effect on farm and ranch families. We can think of no issue that is more important to the average citizen or to the future growth of this Nation.

Our organization is very concerned about fiscal responsibility. We are alarmed at the number of farm and ranch problems which stem from the fundamental problems of runaway spending, inflation, ever higher taxation, and the pervasive influence of Federal regulations on every facet of agriculture, industry, and commerce.

Farm bureau has long been on record in favor of fiscal responsibility. In 1981 our organization expressed the general thinking of farmers and ranchers by offering total support for the President's economic recovery program. We continue to support the basic goals of the program to; reduce taxes, reduce spending, control the growth of the money supply, reduce Federal regulations and bring stability to national economic policy so the private sector can plan savings and investments. While we have seen some control in the growth of the money supply and inflation, Federal spending has

been continuing unabated and at a rate which, in our opinion, is excessive in terms of the taxpayers' ability to pay.

An excessive growth of Federal spending has had, and is continuing to have, adverse consequences for our economy and for individuals. This is particularly true for farmers and ranchers who are faced with rising costs of production and relatively low rates of return for their labor, management, and investment capital. Federal spending has financed the overregulation of business activities, reduced individual work incentives and productivity, increased the real burden of Federal taxes, and led to continuing Federal deficits which threaten the future of our private enterprise system.

The Farm Bureau policy speaks out very clearly on the subject of a balanced budget constitutional amendment. The following is an excerpt from the 1983 farm bureau policy:

We support an amendment to the U. S. Constitution which would require the Federal Government to operate on a balanced budget each year. Only in extreme emergencies could this requirement be waived with the concurrence of the Legislative and Executive Branches of Government. A balanced budget should not be achieved by levying new taxes or increasing tax rates, except for emergencies.

In California, the farm bureau has a history of supporting efforts to balance the Federal budget. In 1978 and 1979 we actively supported resolutions introduced in the California Legislature which urged Congress to call a constitutional convention to require, with certain exceptions, that the total of all Federal appropriations may not exceed the total of all estimated Federal revenues in any fiscal year. While those resolutions did not gain legislative approval, farmers and ranchers have continued in their efforts to require the Federal Government to operate on a balanced budget. Today, we are assisting in the gathering of signatures to qualify an initiative for 1984 to add California to the list of States calling for a balanced budget.

Our objective is fiscal responsibility, and we support Senate Joint Resolution 5 and other proposals which move toward this objective.

We thank you for allowing us to make our thoughts on this important matter known to your committee.

Senator HATCH. Thank you very much for taking the time to share your testimony with this committee, Mr. Gamper. Let me also take this opportunity to expend my appreciation to the American Farm Bureau Federation generally for its record of outstanding work in behalf of a balanced budget constitutional amendment. There is no organization in Washington that has worked harder and more persistently in behalf of such fiscal responsibility.

We are running out of time. We are constantly getting requests for various testimony at our hearings; yours will be, I think, in substantial demand.

Our next witness is George Shaw, California Teachers Association.

STATEMENT OF GEORGE C. SHAW, VICE PRESIDENT, CALIFORNIA TEACHERS ASSOCIATION, AFFILIATE OF THE NATIONAL EDUCATION ASSOCIATION

Mr. SHAW. Good afternoon, Mr. Chairman. My name is George C. Shaw, and I am vice president of the California Teachers Association, the largest State affiliate of the National Education Associa-

tion. I am pleased to have the opportunity to appear before you this afternoon to express the views of the CTA and NEA on the recent and ongoing efforts to call a Constitutional Convention for the purpose of amending the Constitution of the United States of America.

As a basic document granting powers to the National Government and protecting the rights of its citizens, the U. S. Constitution has stood the test of time. It has served the Nation well as the framework for a governmental system that has had to deal with many varied events and crises in our history. So sound was the work of the framers that the Constitution has been amended only 26 times in the 200-year history of the United States. All 26 amendments thus far adopted have been proposed by a vote of two-thirds of both Houses of Congress and ratified by the legislatures of three-quarters of the States. The original 10 amendments, the Bill of Rights, were passed at one time in 1791. The 11th and 12th amendments were passed shortly afterwards and the 3 civil rights amendments were passed immediately after the Civil War. Since then, only 11 amendments have been adopted, including the passage and repeal of prohibition on the manufacture and sale of alcohol—18th and 21st amendments.

The alternative procedure for proposing amendments—a Constitutional Convention called by Congress on application of two-thirds of the States—has never been used. There has not been a Constitutional Convention since 1787, when our Founding Fathers met in Philadelphia to revise the Articles of Confederation which they replaced with an entirely new Federal Constitution. Given the inevitably great risks and uncertainties that the first Convention since 1787 would entail, I believe it should be reserved for an occasion on which Congress itself seems to present an intolerable threat to the States. Short of such a crisis, attempts to amend the Constitution should be limited to efforts to persuade Congress to propose amendments. No subject has been deemed so grave a threat to our constitutional structure of government as to warrant a Convention call.

Since a Convention has not been assembled for nearly two centuries, there are many uncertainties about the process. The prospect of a Convention called to propose amendments to the U. S. Constitution raises very grave questions, the answers to which are clouded in legal debate and political uncertainty.

It is unclear whether a Convention could be restricted to one issue. Even a Convention called on the issue of a balanced Federal budget could incorporate other constitutional constraints and extraneous legislative issues in the name of fiscal integrity. Thus, a "runaway" Convention could conceivably lay open the entire Constitution to any issue, no matter how extreme.

Other procedural aspects are also in a legal limbo. The traditional process receives elaborate description within the Constitution and by the precedents set by the Constitution's 26 amendments via Congress. However, beyond stating the existence of an alternate method, article V is silent. There are no rules, guidelines or precedents to govern a Constitutional Convention, if held, and Federal procedures legislation adoption by Congress would not be binding on any subsequent Congress.

Frequently raised questions are: How are the delegates selected, and what rules would govern? Are the States represented proportionally or equally? Do the petitions for a Convention have to be exactly the same, and is there a time limit on such petitions? Can a State withdraw its petition? Can the Convention consider any amendment to the Constitution, or must it restrict itself to the one for which it was called? Are the procedures or issues open to court review? Do the Governors have to sign State resolutions? Does the President have to sign the Convention call? Is a Convention funded by the States or the Federal Government?

These are but a few of the many unanswered questions that have divided scholars and raised fears of potential Constitutional chaos.

Beyond these unanswered questions are the certain damaging effects that a balanced budget amendment would have on the Constitution itself. By demanding a balanced budget amendment, the States would impose a fiscal straitjacket upon the Congress that would handcuff the ability of the legislative branch to use its taxing and spending powers to address national needs in time of economic crisis. The problems of fiscal and monetary policy can and should be addressed through the legislative process provided by the Constitution. The proper response to inflation does not rest in the generalities of a constitutional amendment, and will not be accomplished through a Convention process which is inherently an open ended process fraught with various agendas and dilemmas.

Our Government must, of course, find better answers to the persistent problems of inflation and the burgeoning deficit. But those answers will not be found in simplistic, rigid, unrealistic, arbitrary constitutional amendments which could not possibly meet the specific exigencies of economic fluctuations. Moreover, the worst possible forum for deliberating on critical, sensitive, technical economic policy matters is the kind of Constitutional Convention being proposed, one which could be uncontrollable and subject to emotional and demagogic appeals.

The economic problems with which this country would be confronted under a balanced budget amendment are catastrophic. The enactment of a balanced budget would assure a return to the devastating economic cycles of the pre-Depression era by effectively dismantling the fiscal weapons needed to combat both unemployment and inflation. Experts tell us that during a recession, a balanced budget requirement would make such downturns far more severe. Unemployment compensation and social welfare programs would be choked off.

It would be virtually impossible to secure legislation needed to create jobs and stimulate the economy or to fund new defense needs, because deficit spending would no longer be permissible. Incomes would erode and investment would be discouraged, resulting in deeper recessions, deeper budget cuts, lower revenues, and higher unemployment.

Ultimately, this balanced budget straitjacket would destroy Federal programs in education, housing, health, transportation, job creation and training, unemployment assistance and public works, prevent adequate enforcement of labor, antitrust, civil rights, and other laws, undermine such regulatory programs as OSHA, environmental, and consumer protection, and wipe out Federal re-

search and development funds for health, science, energy, and agriculture. Major Federal initiatives like the space program, defense, Federal pollution-control construction projects, the Interstate Highway System, and research in science and medicine would be jeopardized. Program would be pitted against program and who will have the final say as which program funding has the highest priority?

The necessity of maintaining fiscal flexibility is best judged against the worst economic disaster of this century—the Great Depression. President Roosevelt used the Federal budget and deficit spending to create programs like the Works Projects Administration, the Agriculture Adjustment Act, and the Civilian Conservation Corps to help put the country back to work.

In 1937, when the economy began to show signs of recovery, Roosevelt and the Congress reverted to traditional balanced budget concepts by cutting expenditures to eliminate the deficit. An economic relapse resulted as unemployment went from 14 percent to 19 percent by 1938. When Congress reversed the gears and widened the deficit, economic recovery began again.

A balanced budget amendment will cripple congressional authority to address national defense crises. Congress would be required to undertake and win by a supermajority vote the right to exceed a balanced budget in order to meet national defense needs during wartime. The delicate balance of power within our tripartite system of government would be upset by the shift of economic decisionmaking power traditionally reserved to Congress. Unfortunately, 32 State legislatures seem to have given little thought to the fiscal or political implications of forcing a balanced budget amendment on the Congress or on the Constitution.

In conclusion, Mr. Chairman, we do not believe a constitutional convention is warranted at this time in our country's history. Nor do we believe that the balanced budget amendment should be written into the basic document which has guided our Nation justly for 200 years. Nothing less than the constitutional and economic stability of the Nation are at stake.

Thank you.

Senator HATCH. Thank you so very much. We appreciate your taking the time to be with us. We will put your complete statement in the record.

Thank you very much.

We are down to our last two witnesses. We will call Prof. Robert Goldstein, representing the American Jewish Congress.

Professor Goldstein, it is great to have you here, and I look forward to your testimony.

STATEMENT OF PROF. ROBERT D. GOLDSTEIN, UCLA SCHOOL OF LAW, APPEARING ON BEHALF OF THE SOUTHERN CALIFORNIA REGION OF THE AMERICAN JEWISH CONGRESS

Mr. GOLDSTEIN. Mr. Chairman, thank you for the privilege of addressing this subcommittee.

I am Robert Goldstein of the faculty of the UCLA School of Law. I am appearing on behalf of the southern California region of the American Jewish Congress.

The southern California region of the American Jewish Congress is not here to address the problems of the present Federal deficit, or of the wisdom of deficit spending, or of the appropriate size of the Federal Government. These are political questions of a high order; and they have been placed at the center of our domestic political agenda, where they are being analyzed, debated, and subjected to repeated votes.

What seriously concerns the southern California region of the American Jewish Congress are two methods that those wishing to balance the budget seek to employ. These methods are a constitutional amendment requiring a balanced budget, coupled in some versions with a limit on the annual growth of outlays or receipts, and, as an alternative, a constitutional convention for the purpose of proposing a balanced budget amendment.

While we appreciate the serious concerns that many have about the Federal deficit, this region of the American Jewish Congress views both these methods as unwise in the extreme. Let the political energy, time, and financial resources, and they are considerable, that are being devoted to amending the Constitution be instead directed to challenging the revenue and spending programs proposed or accepted by the President and adopted by the Republican Senate and Democratic House. For such taxing and spending decisions are of the essence of political choice; but they are foreign to the constitutional realm. That realm consists primarily of the allocation of power and the establishment of procedures, within a framework preservative of liberty.

Our Constitution is a rugged one. It has endured deep crises and vast evolutionary change by providing the framework in which the people have reduced their many differences to political compromises. Accordingly, it will be useful to consider some of the attributes of our Constitution's ruggedness, and evaluate whether a balanced budget amendment would enhance or diminish those attributes of endurance.

While the Constitutions of some Nations have come and gone with little effect, the U.S. Constitution has endured as law, enforced by all branches of Government. For it is not only an inspiring document, setting forth our national goals, but it also sets forth positive law, necessarily obeyed. So we must consider carefully whether a balanced budget amendment would be enforceable, or a mere precatory exception to our Constitution.

While other constitutions have provided for emergency suspension of constitutional requirements, when ensuing suspension, not only in times of crisis, but for reasons of political convenience, the U.S. Constitution has only one such limited provision, involving habeas corpus. The provision of the Constitution have been carefully chosen, and are meant to be applied. Yet all versions of a balanced budget amendment contain a suspension clause.

While other constitutional systems have fostered representational arrangements that can prevent working majorities and lead to governmental paralysis and failure in crisis, a happy confluence of political and constitutional circumstances has prevented such paralysis here. A balanced budget amendment that burdens Congress with impossible tasks, avoidable only by the vote of a supermajority, leads toward paralysis, not away from it.

While other constitutions have contained detailed provisions to deal with particular political outcomes, the U.S. Constitution has endured as a document of national unity by providing the framework of Government, and relying on the people to adapt their political choices to evolving needs. Yet the balanced budget amendment proposes to adopt one economic theory of Government-financial-management permanently.

These then are some of the attributes of the Constitution's ruggedness, and of the ways in which a balanced budget amendment would not contribute to its strength.

Consider each of two possibilities: that a balanced budget amendment, if adopted, would be ignored and disregarded or that it would be enforced with reasonable rigor.

The first possibility is a real one. All three branches could benignly neglect such an amendment, as if it were a campaign platitude, not a constitutional provision. Congress could avoid its strictures with sophisticated techniques: offbudget items; federally chartered corporations; increased regulation that imposes costs on the private sector; et cetera. More blatantly, Congress could adopt paper budgets that bear little relation to reality. Or Congress could, as an annual matter, suspend the operation of the amendment by whatever majorities its suspension clause requires. Such treatment, whether sophisticated or blatant, would work a hoax on the American people. After being persuaded to amend our basic document, because an economic crisis required it, they would find that their political will was ineffective and that the political realm, aside from its rhetoric, proved empty. But, as a result, the Constitution would have been demeaned. Expediency in constitutional matters would have gained ground. Our politics and our law could not but be injured by such an empty gesture.

The other alternative, of course, is that the amendment would be enforceable and enforced. This, too, would have grave consequences. Political needs, based on current realities would be thwarted; small congressional minorities could stymie Government or, at least, extort costly concessions in exchange for their votes to suspend the amendment. Imagine that an amendment requiring a balanced budget at the end of each fiscal year had been adopted on President Reagan's inaugural day. That amendment might presently preclude the President from implementing those very policies to which he and the Congress have assigned a higher priority than a balanced budget: the tax cut, increased defense spending, maintenance of the Presidentially defined minimum safety net, and even military action in Grenada and Lebanon. Or imagine an economic downturn with resulting reduction in tax receipts; Congress could be denied the countercyclical spending that it believed to be necessary to halt the recession.

In addition to thwarting the budgetary choices of the majority, the amendment could have major and unintended consequences on the allocation of power among the three branches of Government. Versions of the amendment differ with respect to where they vest enforcement responsibility, some locating responsibility in Congress, others in the Government as a whole. Whatever the particular text, it is easy to imagine resulting shifts in power among the

three branches of Government and heightened conflict among them.

Since deficits arise during the course of Executive spending, a President might reasonably interpret any amendment, however phrased, as authorizing, or requiring the impounding of funds, a power that Congress has heretofore denied, except on a temporary basis. Were the amendment absolutely to preclude imbalance, the President could use a temporary impoundment to exercise an absolute discretion to choose which, among many congressionally authorized programs, would survive.

Military action and foreign policy initiatives are expensive and may often require supplemental appropriations. While Congress now uses such appropriations to exercise some control over the President, it also defers to executive decisions during a crisis. A balanced budget amendment might compel Congress to scrutinize and limit Presidential action in foreign affairs, and as Commander-in-Chief in ways that some might find intrusive on Presidential prerogative. Those versions which permit deficits only in times of declared war or national emergency would compel Congress to characterize a foreign policy crisis or military action in ways that could embarrass the President. Declarations of national emergency, year after year as a matter of course, would also be destructive of the language of domestic politics.

At least as troublesome is the potential involvement of the Federal judiciary in the budget and taxing process. Until now the courts have been far removed from this process. But it is an entirely open question whether the judiciary would undertake to enforce a balanced budget amendment. As it now reviews reapportionment plans, a court might find that a budget wrongly dealt with certain outlays or receipts, and send it back to Congress for another try. If Congress sought to avoid the amendment, for example by increasing off-budget spending, a court, searching for a simple rule, might require that absolutely all expenditures be counted in the budget. Imagine a district court's intervention in a conflict between the Congress and the Executive over impoundment of funds that arose in a disagreement about the interpretation of the budget. A suit at the behest of a taxpayer or a Congressman could bring a court into conflict with both a Congress and President bent on ignoring the amendment. If these examples are troubling, consider a court ordering the impoundment of funds and then choosing which program will survive.

The assumption that the present case law on standing and justiciability will serve to preclude such scenarios is simply unwarranted. One need only imagine a court that feels a modicum of responsibility to the integrity of the Constitution and to the will of the people to believe that such a court might not abandon a newly adopted amendment to desuetude. The versions of the amendment that limit growth in the Federal budget would especially invite taxpayer suits. Once courts entered this thicket, the pressure of what could be hundreds of lawsuits and the institutional need for simple rules of application could push the judiciary to ever stricter application of the amendment. [The rapid evolution from *Baker v. Carr*, 369 U.S. 186 (1962), to the one-person-one-vote rule is instructive in this regard.]

Even a Supreme Court wary of enforcing the amendment could be unwillingly involved by the implementing legislation. At the behest of Congressmen and Senators intent on enforcing the amendment, such legislation could create standing and provide judicially applicable standards.

Such concerns have led Judge Robert Bork, of the D.C. Circuit Court of Appeals, to advise caution with respect to controlling national fiscal policy through a constitutional amendment. In the September-October issue of the American Enterprise Institute's Journal, "Regulation," Judge Bork, asking "whether we want the economic policy of the United States to be what the judges say it is," points out that "[c]onstitutional provisions pass through the hands of judges," and that such an amendment would be "transformed to some extent in that process," with resulting "unworkable" or "unintended consequences."

Some will respond to these many concerns by arguing that careful drafting of the amendment would avoid these problems. The right language, they will say, could assure no judicial review and no impoundment power; it could avoid a supermajority requirement that would vest power to paralyze Government in the hands of a few; it could focus not on actual spending but only on projected budgets, with few if any actual consequences for deficits. Let us forget that even general pieties may eventually turn into legal rules, and allow this assertion. We are then faced with the other and opposite evil that we have already discussed: a gesture that devalues the Constitution by adding a meaningless provision.

Because both alternatives, enforcement and nonenforcement, are so unattractive, the southern California region of the American Jewish Congress believes that questions of budget and taxation must be resolved in the political arena of Congress by elected representatives who are free to assess the requirements of the present and future unencumbered by a constitutionally compelled outcome.

For entirely different reasons, the southern California region of the American Jewish Congress also believes that the call for a constitutional convention to propose a balanced budget amendment is seriously misguided and is based on a deeply mistaken assessment of the costs and risks of venturing into the uncharted territory of a constitutional convention.

Many of the unanswered and difficult questions raised by the convention method of amending the Constitution have been thoroughly addressed in the hearings held on this subject by the Senate Judiciary Committee's Subcommittee on the Constitution in the first session of the 96th Congress, and printed as serial No. 96-77. The testimony in those hearings is essential reading on this subject.

Here, I propose to raise briefly only three of the practical problems involved with the convention method of amending the Constitution.

The first uncharted problem with the convention method is the application process itself. It is a game of roulette. Since only the 34th valid application has any binding effect, States may well have treated their applications as rhetorical gestures, favoring restricted Federal spending, which may be withdrawn at any time. It appears that applications, especially early ones, may have been adopted

with little or no debate or analysis of the consequences of a convention call. A comparison with the ratification process for proposed amendments is instructive. The ratification procedure brings an intense and national focus to the State debates—a specific text, congressional reports and hearings, a time deadline, a known result upon ratification, and a simultaneous nationwide debate. By comparison, the State application process takes place in obscurity and formlessness, with no text, no clear deadline, little debate and little or no news coverage. Thus it is entirely possible that a State may adopt an application under such poorly informed circumstances that it will not know itself to be the decisive 34th.

Upon receiving that application, Congress will be compelled to develop criteria of validity and judge each of the 34 applications. But will Congress discharge this new obligation with high standards or will it play politics with hard, constitutional questions by counting applications without serious scrutiny? If so, then this country will endure a convention by default: without full State legislative scrutiny of the need for a convention and without congressional scrutiny of the applications.

While stressing that no criteria of validity are established and that there is no guarantee that Congress will scrutinize applications closely, I want to note that some of the presently existing 32 applications may be invalid. Some are so old that they fail to satisfy any reasonable definition of contemporaneity. Some applications are more than 7 years old. But even the 7-year period often allowed for ratification of amendments is, I believe, too long for Convention applications. For the defined nature of the ratification procedure gives notice to State legislatures of the import of their decision, and the lengthy time period allows each State to deliberate for some years before reaching a possibly irrevocable decision. But in the case of convention applications, there is no basis for believing that applications, using different language, enacted 7 years apart, reflect any general and contemporaneous sentiment among the States for a convention. For this reason, the Southern California Region of the American Jewish Congress strongly opposes the time limits proposed in Senate bill 119, section 5(a), which was introduced in the 98th Congress, first session.

The mode of State enactment may also render any application invalid. For example, the proposed initiative in this State would attempt to compel the California Legislature to make an application under duress. This substitute for the legislative application required by article V may well fail to meet Federal constitutional standards. If this initiative should pass, it would add to the conventional problems that the Congress would have to address. Because the validity of the proposed California initiative must be assessed on the basis of article V of the Constitution, the Southern California Region of the American Jewish Congress must firmly reject the proposal in Senate bill 119, section 3 (a) and (b), which suggest that the validity of the application is not a Federal as well as a State question.¹

¹ The validity of an application may be affected by other considerations as well, such as whether it is construed to be merely precatory, or whether it is too specifically tied to a particular recommended text, and the like.

I have not even touched on the most fundamental constitutional question concerning the validity of applications for such a convention: Is a State's application for a convention that is limited to one subject effective? That question is inextricably tied to the question of whether Congress has the power, constitutional and political, to limit the scope of a convention and the amendments it might propose. Only if Congress has the power to limit a convention can a State's application for a limited convention be valid. For, if Congress lacks the power, and the will to employ that power, then a State which has made limited application for a limited convention has applied for what Congress cannot give under article V. Put another way, that State has imposed an impossible condition on its application which renders the application a nullity.

Should Congress find 34 valid applications, Congress would then have to determine the method of selecting convention delegates. It appears that elections of delegates may be required pursuant to the one person-one vote rule. If Congress determines that delay until regularly scheduled elections is inappropriate, it may call for special elections, despite the inevitably poor voter turnout. One must wonder, then, whether the delegates would be the best in America as in 1787, or whether the hard course of election and convention attendance, for possibly months on end, will deter the best from participating. Will those with national experience, Senators, Congressmen and Federal employees, be precluded? Perhaps only representatives of special interest groups, unattached to the organized parties and political process will run for this one-time election.

Finally, consider the convention itself. The power and will of the Congress to limit this other deliberative body of the Nation's representatives is unknown but doubtful. Equally unknown is whether judicial review would be available; a confrontation between the Supreme Court and the convention is not inconceivable. But even those who promise that a limited convention is feasible have not addressed the following problems: That the subject of a balanced budget might be manipulated to address a vast range of other arguably economic issues such as the establishment clause of the first amendment, the size and role of the Federal Government and the structure of federalism, military spending, the nuclear arsenal, welfare, and health benefits, funding for abortion, tax policy, and more.

To conclude, the expenditure of resources—political, economic, emotional—for a convention would be enormous. These are the very same limited resources that our existing political processes, in Congress and the States, daily require in addressing the problems of governance. To divert these valuable resources away from the political process that is established, that has customs and procedures and expertise, in favor of a parallel but unknown process that will require elaborate improvisation throughout, is a mistake in the absence of the kind of constitutional crisis for which the Founding Fathers designed the convention method. The lack of assurance that a convention could be limited only adds to the inappropriateness of resorting to a convention at this time. To the extent that there is a fiscal crisis, it should be met through the political process and not by these constitutional methods which entail far too many risks and far too much cost, for too little, if any, gain.

Thank you.

Senator HATCH. Our next witness is Prof. William Craig Stubblebine, a great resource for those of us in the Congress who have proposed the balanced budget/tax limitation amendment.

STATEMENT OF WILLIAM CRAIG STUBBLEBINE, PROFESSOR OF POLITICAL ECONOMY, CLAREMONT McKENNA COLLEGE, DIRECTOR OF THE CENTER FOR THE STUDY OF LAW STRUCTURES, CLAREMONT McKENNA COLLEGE, CLAREMONT, CA

Dr. STUBBLEBINE. I am William Craig Stubblebine, Von Tobel professor of political economy at Claremont McKenna College and Claremont Graduate School, and as well director of the Center for the Study of Law Structures at Claremont McKenna College, Claremont, CA.

Under a grant from the Tax Limitation Research Foundation, the Center for the Study of Law Structures has maintained a continuing research effort in constitutional tax and spending limitations at all levels of Government.

With many others, I also am a founder of the National Tax Limitation Committee, and serve that committee as a director.

I am pleased to have this opportunity to testify with respect to Senate Joint Resolution 5, the proposed Balanced Budget Tax Limitation amendment to the Constitution of the United States.

I shall keep my remarks brief, while seeking the permission of the Chair to submit a written copy of my remarks at a later date.

The history writ by Congress with respect to Federal taxing, spending, and deficits, is both well-documented and well-known. This history may be summarized by noting that, in 1929, Federal outlays represented just 3 percent of gross national product (3.1/103.4) with a surplus representing seven-tenths of 1 percent of GNP (0.7/103.4) and 22.5 percent of total Federal outlays. By 1982, Federal outlays had grown to 24.3 percent of GNP (745.7/3073.0) with a deficit representing 4.2 percent of GNP (127.9/3073.0) and 17.2 percent of total Federal outlays. In 1929, the national debt represented 16.3 percent of GNP (16.9/103.4); by 1982, the debt had grown to 37.3 percent of GNP (1147.0/3073.0).

Few could take pleasure in this outcome, much less in the prospects ahead. There is wide agreement that something must be and will be done to alter these prospects.

In my judgment, Senate Joint Resolution 5 provides a constructive approach to restoration of some semblance of Federal fiscal responsibility. In and of themselves, its provisions represent reasonable and sound guidelines for taxing and spending: Plan an appropriate balance between revenues and expenditures, guarantee that actual spending not exceed planned spending, and restrain the growth of taxing and spending to the growth of the underlying economy.

In addition, and as important, Senate Joint Resolution 5 offers the only serious prospect for restoring fiscal responsibility. Other alternatives—statutory limitations or improvements in the budgeting process of Congress, election of fiscally responsible Representatives to the Congress, and Presidential line item veto—"fail to come to terms with the fundamental" structural defect of the con-

gressional decisionmaking process as it pertains to the issues of taxing and spending.

Time does not permit a full review of these conclusions. Neither does it permit full discussion of the various arguments and reservations which have been lodged against the proposed amendment to date.

Therefore, with the committee's permission, let me focus on just one issue which arose in the context of the Senate's adoption of Senate Joint Resolution 58 in August 1982.

As reported by the Judiciary Committee, Senate Joint Resolution 58 contained language in section 2 providing that the growth rate of total Federal receipts from year-to-year should not exceed the rate of increase in national income "in the last calendar year ending before such fiscal year."

Subsequently, this was amended to read "in the year or years ending not less than 6 months nor more than 12 months before such fiscal year." The new language was intended to provide a constructive flexibility in restraining the growth of Federal receipts.

The new language also called into question two aspects of this constraint. First, what growth period of national income would be appropriate year in and year out? Second, what could be the effect of this greater flexibility on the amendment's ability to provide effective constraint? I would address each of these questions in order.

For comparative purposes, the applicable growth rate of gross national product were computed for fiscal year 1959-60 through 1981-82, the latter year being the last full fiscal year reported. This period corresponds to the last year of the Eisenhower Presidency through the first year of the Reagan Presidency. It also corresponds to a period of variable rates of growth of real gross national product, and a generally rising price level with subperiods of relatively rapid inflation. At no time during this period did prices actually decline.

Comparison of a fixed 1-year growth period with the fixed compound average 3-year growth period produced the following conclusions. First, a 3-year period provides relatively more stability in the annual permissible increase in Federal receipts; second, over extended periods of time, both a fixed 1-year and a fixed 3-year average provide substantially the same maximum permissible compound growth in Federal receipts.

By extension, the greater the period of averaging, the greater the stability in year-to-year growth of Federal receipts. Also by extension, any fixed averaging period would provide substantially the same compound growth of Federal receipts.

If fixity does not affect the compound growth of Federal receipts, the issue of the appropriate averaging period reduces to the issue of the relative stability between shorter and longer averaging periods. The shorter the averaging period, the more significant the contribution of the Federal budget to counter-cyclical fiscal policy.

Over the period in question, the 1-year period is almost perfectly counter-cyclical in that the greatest permissible increases in Federal spending could occur during periods of least growth in the underlying economy and the smallest permissible increases in Federal spending could occur during periods of most rapid growth in the underlying economy.

To the extent a greater contribution to counter-cyclical fiscal policy is desirable, so also is a fixed 1-year growth of national income desirable.

At the same time, the longer the fixed averaging period, the greater the predictability of the growth of permissible Federal receipts and outlays. Greater predictability itself could aid in lending greater stability to the underlying economy. It also could aid in the congressional budget process in that the final estimates of the prior calendar year's growth of national income would have less impact on the estimates of the permissible growth.

This trade-off between contribution to counter-cyclical fiscal policy and predictability of Federal receipts and outlays provides still another illustration of the economists' notion of opportunity costs: More of one good thing, means less of another good thing.

For a fixed 3-year growth period, the appropriate language for section 2 of the proposed amendment would be, " * * * than the average rate of increase in national income in the last three calendar years ending before such fiscal year * * * ."

Introducing constitutional flexibility in determining the length of the growth period raises the prospect of the Congress manipulating the growth period by statute to achieve maximum growth of Federal outlays. For the period under review, the growth maximizing period ranged from 1 year to 9 years, under a simulation permitting no more than a 10-year average rate of growth.

The average rate of permissible growth in Federal receipts and outlays over these years was substantially the same as that actually realized, and was some 20 percent greater than could have been realized under a fixed average growth period.

Unlike a fixed growth period, manipulating the length of the period to provide the maximum growth also would lead to Federal taxing and spending taking an ever larger share of national income.

With a 20-percent leverage in Federal taxing and spending, one could predict that constitutional flexibility would induce the Congress to devote some portion of its energies each legislative year to dealing with conflicting proposals by fiscal conservatives and liberals to change the period set forth in the enabling statute.

Such wrangling would divert attention from the essential issue of fiscal responsibility from achieving consensus with respect to spending priorities.

This quality of flexibility leads me to urge the committee to reintroduce a fixed growth period, whether this period be of 1 year, or 2 years, or 3 years, or 5 years.

The bias is in favor of spending. It is easier to spend than to try to live within budgetary means. Statutory enactments are not going to change that in any fundamental way. Even if those statutory changes were constructive, they could be adopted pursuant to this amendment.

Let me just close with one modest observation. I am under the impression that 535 Members of Congress abhor—each and every one abhors deficits—not all, but a consistent and substantial majority. Yet for some reason there is never a majority to reduce spending for any individual program, much less to eliminate deficits.

That observation, I think, speaks to the structural defect in the current process.

Senator HATCH. Thank you. We appreciate your leadership, Professor Stubblebine, and with that we will recess this hearing until further call of the Chair.

[Whereupon, the subcommittee adjourned, subject to the call of the Chair.]

PROPOSED BALANCED BUDGET/TAX LIMITATION CONSTITUTIONAL AMENDMENT

TUESDAY, MARCH 6, 1984

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:07 a.m., in room SR-418, Russell Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senators Thurmond, Grassley, and Dole.

Staff present: Stephen J. Markman, chief counsel; Diane Franke, clerk.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. Ladies and gentlemen, this marks the second and final day of hearings during the 98th Congress on the subject of the proposed balanced budget constitutional amendment. Today's hearing represents the 14th hearing conducted on this issue by the Subcommittee on the Constitution during the past three Congresses.

In a historic vote in August 1982, the U.S. Senate, by a two-thirds vote, proposed as the 27th amendment to the U.S. Constitution the balanced budget/tax limitation amendment. Subsequently, the amendment secured the support of a substantial majority of the Members of the House of Representatives, but fell narrowly short of the requisite two-thirds vote in that body.

The amendment before this panel today, Senate Joint Resolution 5, is a direct successor of the measure approved by the Senate during the 97th Congress. As with its predecessor, Senate Joint Resolution 5 enjoys substantial bipartisan support and is the product of extensive compromise and negotiation efforts over a period of years inside and outside the Congress.

The proposed amendment currently has 45 Members of the Senate as cosponsors. There are well over 100 cosponsors of a companion measure in the House of Representatives.

As is appropriate for a final day of hearing on a constitutional amendment, we have invited to testify four of the most highly knowledgeable individuals on this issue, two of whom support the balanced budget/tax limitation amendment and two of whom oppose it.

Following what I know will be an informative panel discussion among these individuals, we will hear testimony from a number of organizations that have been actively involved in the public debate on this issue. So I wish to thank in advance all of the individuals who have consented to share their expertise with this committee today.

I might mention at the outset of this hearing all written statements shall be put in the record as though fully delivered. We will appreciate summaries and allow enough time for questions.

Our first panel will consist of Lew Uhler, who is the president of the National Tax Limitation Committee. For more than 6 years, the committee has played an instrumental role in developing and securing support for the proposed balanced budget/tax limitation constitutional amendment.

James Davidson is the executive director of the National Taxpayers Union. The union has also played a consistent leadership role in the constitutional amendment effort since the outset.

Carol Cox, former counsel to the Senate Budget Committee, is the executive Director of the National Committee for a Responsible Federal Budget. The committee has played an articulate role in opposing a constitutional amendment relating to a balanced budget, while supporting statutory reforms of the congressional budget process.

Steven Reiss is professor of law at New York University and today is representing the Bar Association of New York City, an organization which has critically analyzed the proposed constitutional amendment.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF
SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

MR. CHAIRMAN:

I want to commend you for holding this hearing on a proposed balanced budget constitutional amendment--a subject of extreme importance to the economic well-being of our Country. I congratulate you for the leadership that you have exhibited in the area of national fiscal responsibility.

The concept of a balanced budget is of great interest at this time as evidenced by the attention given to it by the President in his State of the Union address. The interest in this matter is, however, not confined to the Nation's capital. In fact, to date, thirty-two States have approved resolutions requesting Congress to call a convention in order that the Constitution can be revised to require the annual balancing of the Federal budget.

During the last two Congresses, many proposals have been introduced to bring about a balanced Federal budget and to impose taxing and spending limitations. The measure that we consider today, Senate Joint Resolution 5, is one of several proposals that I have introduced. This resolution incorporates what I believe to be the best elements of all of these proposals. In fact, S.J. Res. 5 is very similar to S.J. Res. 58 which I sponsored in the 97th Congress and which passed the Senate during the Second Session.

First, S.J. Res. 5 would require the Congress to adopt an annual spending plan in which the expenditures could not exceed the total funds received into the Treasury. This plan--called "a statement of receipts and outlays"--would form the basis for all spending legislation. Under this proposed amendment, it would be the responsibility of the President and the Congress, through the exercise of their constitutional powers, to ensure that actual government outlays conform with the statement of receipts and outlays. This proposed Article would also make Congress more accountable for its fiscal decisions because the requirement that the budget be in balance could only be waived by a three-fifths vote of each House.

Second, this measure would place a limit on the rate of growth of the Federal budget. Under Section 2, the rate of increase in the total monies taken in by the Federal government could not exceed the rate of increase in the national income for the year or years ending in the preceding twelve months. It has become incontrovertible that the National government does not have the self-discipline to avoid deficit spending. This proposal will provide that discipline by means of a constitutional amendment.

During the last few years, it has become more evident that the only way that the goal of a balanced budget is ever going to be reached on a consistent basis is by amending the Constitution. That this remedy is the only realistic solution to this problem is borne out by the fact that the proponents of such an amendment are now just two States short of the number required to compel Congress to call a constitutional convention. There is grassroot support for change in the way the Federal government spends money, and, even though the Senate passed a balanced budget resolution in the 97th Congress, the fact that there is a growing call for a constitutional convention on this issue shows that the Congress as a whole has not acted in accord with the wishes of the vast majority of the American people.

Mr. Chairman, the message from the American people is clear. The vehicle for reaching the goal of a balanced budget is well-known. It is now time for the Senate to act. We already have forty-five cosponsors to S.J. Res. 5. I encourage all of our colleagues to study this proposal so that we can move forward on a bi-partisan basis to help guarantee the economic future of our great Nation.

Thank you.

Senator HATCH. At this time, we would like to call those four panelists to the table. Mr. Davidson apparently is not here yet, but we believe he will be here. Let us start with Lew Uhler, who is the president of the National Tax Limitation Committee, then we will go to Ms. Cox; if Mr. Davidson arrives, we will go to him and then Mr. Reiss.

Mr. Uhler.

STATEMENT OF A PANEL CONSISTING OF LEWIS K. UHLER, PRESIDENT, NATIONAL TAX LIMITATION COMMITTEE; CAROL COX, COMMITTEE FOR A RESPONSIBLE FEDERAL BUDGET; STEVEN A. REISS, COMMITTEE ON FEDERAL LEGISLATION, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; AND JAMES D. DAVIDSON, NATIONAL TAXPAYERS UNION

Mr. UHLER. Thank you, Mr. Chairman. I am Lew Uhler, the president of the National Tax Limitation Committee. The position of our committee, of course, as has been outlined is not only to be supportive of this amendment to the U.S. Constitution, but to have assisted in its design and preparation.

A moment of background in that respect: we had the pleasure of convening several years ago a group of some of the brightest minds in the nation in free market economics, in sociology and political science, from Dr. Milton Friedman to Bob Bork, Mr. Nesbitt, Paul McCracken, William Craig Stubblebine and many others to assist over a period of months in shaping a tax and spending limit amendment to the U.S. Constitution.

Then it was, of course, through the good offices of Senator Hatch and others on the subcommittee who, in the early months of 1981 as we worked on this project, shaped the integration of the concepts of a balanced budget with a limitation on the growth rate of taxes and spending, linking it to the growth of the economy of our Nation as measured by national income.

It is glaringly apparent, I think, to all observers, that the deficits we now confront, and the growth rate of spending in this Nation, are symptoms of some type of fiscal paralysis, of fiscal dysfunction.

Neither the administration nor the Congress seem to have found a way, under existing rules, to control deficits. It is rather clear that the culprit is not a lack of tax revenues, but rather a rapid increase in the proportion of the earnings of the people which have flowed to the Federal sector and are being spent.

Taxes, after all, as a share of GNP, have ranged 18-19 percent, whereas spending has steadily increased to virtually one-quarter of the gross national product. Hence, simply increasing taxes is not the answer. Without the benefit of a constitutional rule by which to discipline the process, there is no internal self-correcting mechanism that is apparent.

We can talk about electing better men and women to the Congress of the United States, as some around the country have suggested. But, certainly, we elect fine men and women who are as committed as the general population to fiscal responsibility, and yet things continue to flow in the same direction.

We do hear claims that under current circumstances we have a deficit that is structural in nature; that we have to address this by

rapid increases in taxes. But I think it is clear that the structural nature of the deficit, to the extent that it exists, is simply a current law phenomenon.

The only thing that is really structural is the year-by-year addition to the national debt and the necessity to pay interest on that national debt forever after it is added unless, of course, we reduce and eliminate that debt.

Hence, we are looking, as we add in the range of \$200 billion a year to this debt, that within the next 4 to 5 years the interest alone will be \$200 billion or more, well more than \$800 per year in interest for every man, woman, and child in this Nation.

We can talk about the crowding out problem and the higher interest rates attendant to it. But, at bottom, as we look about this Nation, what we really find is a general acceptance of the notion that constantly spending more than we take in is immoral. We must not thrust onto future generations, even those yet unborn, the cost of our current profligacy. Hence, we must do something; we must achieve a constitutional rearrangement.

I am fearful, as we look at the combat between the White House and Capitol Hill, that because of the arrangement of affairs thrust on the Government of the United States by the combined requirements of the Budget Acts of 1921 and 1974, each year we play what could be characterized as "budget chicken."

As you know, the game of chicken, participated in by some teenagers, consists of two cars hurtling at one another at breakneck speed. One is to swerve, lest you have a head-on collision, and the guy to swerve is the "chicken."

Under the requirements of the Budget Act of 1921, for the first time, the President was required by statute to propose a budget. In years when things were reasonably in balance, that was not a burdensome challenge. These days, it is a terrible political burden to impose on one of the two players in the budgetary process that he swerve first.

By law, the President must swerve first; he has got to present a budget recommendation. I do not care if it is Ronald Reagan or Jimmy Carter or whoever else it might be. The President, under the spending and taxing requirements of current law, is thrust into the position of recommending huge deficits unless he is willing to face political extermination threatening huge immediate cuts in major programs.

That is just the fact of life. That is where we are, and we have got to get out of that process. The only apparent way is through a change in the fundamental rules by which the budgetary and fiscal business of this Nation is done.

In the current debates and hearing, this body and the House of Representatives are agonizing over what to do about the immediate deficit problem. The question is raised, is not an amendment to the Constitution, because of the lengthy time period over which approval, ratification, and implementation would take place—is not the amendment process too long to affect the problem as it confronts the Nation today?

I would suggest to the contrary. I think it is abundantly clear that approval this year by the Congress of the United States of this amendment to the Constitution would send a signal of commitment

to ultimate fiscal order. The likelihood of successful and rapid ratification—because of the overwhelming support which the amendment enjoys among the population of this country—would have a dramatic, immediate effect upon the future of the economic recovery in which we are currently engaged, assuring its continuation and robustness; giving the money managers, whether they are portfolio managers or those who make capital investment decisions, the kind of confidence in the future that will produce enormous, expansive effects, maintaining this economic recovery.

Those very expenditures will, in turn, be the foundation upon which additional revenues flow to the Government. The likelihood would be that the rate of revenue inflow to the Government would be greater than we anticipate under current projections.

So the amendment becomes not only long-term discipline for all of us, but it becomes an immediate source of assistance and confidence in meeting the current deficit problem. The American people, I think, would feel very comfortable with additions to the national debt, those additions winding down over the near term, in exchange for the confidence of a permanent control over any further additions to that national debt, allowing that stated national debt to dwindle as a share of GNP over time and making it, and the servicing of that debt, manageable and even minute years downstream.

Those, Mr. Chairman, are the thoughts and the reasons why our committee, and those whom we have assisted throughout the Nation, so fervently endorse the amendment and urge its approval by the Senate of the United States.

[The prepared statement follows:]

PREPARED STATEMENT OF LEWIS K. UHLER

Mr. Chairman, my name is Lewis K. Uhler, and I am president of the National Tax Limitation Committee, the nation's largest citizens' lobby working to constitutionally limit the growth of government spending and taxes. We are supported by more than 600,000 individual members and some 30,000 businesses, large and small. I thank the Subcommittee on the Constitution for affording us the opportunity to testify on this most important subject -- the Tax Limitation/Balanced Budget Constitutional Amendment, (S.J.Res.5).

I would like to begin by posing a question to which there might seem to be only one answer: Do deficits matter? The almost unanimous answer would certainly be a resounding "Yes" But there is considerable disagreement as to how much they matter.

Can we safely put off until 1985 -- or later -- implementation of policies designed to zero out the deficits? What are the issues, the risks, the remedies -- politically and substantively?

First, let's catalogue the viewpoints and those who are expressing them:

* Secretary of Treasury, Don Regan, Assistant Treasury Secretary for Economic Policy Manny Johnson, Norm Ture, Paul Craig Roberts, Rep. Jack Kemp and others (some referred to as "supply siders") say deficits don't matter, or they don't matter very much. Deficits are merely the difference between revenues and spending. Taxes remain too high; reducing taxes further will accelerate the recovery. Economic expansion will close the deficit gap. Supply siders tend to focus more on the consequences of taxes than on the implications of federal spending.

* Fed Chairman Paul Volcker, CEA Chairman Martin Feldstein, former CEA Chairman Paul McCracken and others represent the traditional,

fiscally conservative "Wall Street" view. Deficits do matter very much in terms of impact on economic activity and interest rates. And while spending restraint is necessary to close the deficit gap, closing that gap is sufficiently important to justify additional taxes, as well.

* Dr. Milton Friedman and other monetarists suggest that interest rates and inflation are almost exclusively a function of the Central Bank's handling of money supply growth. Deficits do matter but primarily because of the political implications and pressures which they ultimately impose on the Fed, in its conduct of monetary policy. The villain is the proportion of our earnings and wealth subject to the decision making of the public sector. Given a choice between a federal spending level of \$500 billion, with \$200 billion deficit, and a balanced budget at a spending level of \$800 billion, Dr. Friedman would happily opt for lower spending despite the deficit.

* Foreign leaders see United States deficits as the source of the high real interest rates which have prompted an outflow of capital to the United States and an artificially strong dollar. A robust, sustainable worldwide economic recovery is dependent on the U.S. getting its fiscal house in order, many of them believe.

* Liberals in Congress, who not long ago scorned preoccupation with deficits, have gone through a metamorphosis. They now champion budget balancing through increased taxes, claiming that government's expenditures already have been cut to the bone. Repeal of personal income tax indexation, scheduled to commence January 1, 1985, is their overriding objective.

* Most Americans in all walks of life share a concern for deficits and have a "gut" feeling that deficits must have an adverse effect on the economy through interest rate increases, inflation or whatever, over the long pull. Also, they believe it is fundamentally immoral to

continue spending more than you take in, pushing off onto as yet unborn generations our current profligacy.

Second, Mr. Chairman, rhetoric aside, what are the claims/issues regarding deficits? Can we distinguish what is myth, what is reality?

* "Deficits are Structural". Under current tax laws and spending statutes, no matter how robust the recovery, there will be a minimum \$100 billion deficit annually; i.e., revenues simply will never catch up with expenditures. ("Structural" deficit is generally defined as the gap between revenues and expenditures under current law at full employment.)

The inexorable nature of the structural deficits prompts some to urge tax increases. This justification for higher tax levies misses a critical point. They are merely the creature of congressionally-approved entitlement programs which under current law are adjusted "automatically" by changes in cost of living. Congress could revisit and revise those laws and schedules. Those in Congress who argue for more taxes would like us to believe that their hands are tied; philosophically they prefer such expenditures -- and more.

In considering their pleas for tax increases, we must recognize that congressional leaders are constantly testing to determine the maximum politically acceptable level of deficits. \$200 billion seems to be too high, but maybe, they calculate, \$100 billion is tolerable. If the recovery, by itself, brings the deficit to \$100 billion, and we increase taxes by eliminating indexation, or otherwise, new levels of spending will be virtually assured. For example, President Reagan compromised on the 1982 tax increase on the promise that spending would be cut \$3 for every \$1 of new taxes. Surprise. For each new tax dollar, spending has increased more than one dollar.

Although the deficit cannot be called "structural" in any true sense (a better term than "structural" would be "current law deficit"), there is a very real "structural" problem attendant to an annual deficit, one not susceptible to congressional action or manipulation. It is the on-going interest charge arising from each year's deficit. Debt service is a fixed, or "structural," cost in the true sense and is now the third-largest item in the federal budget.

The size of the annual payment for interest is wholly dependent upon the interest rate in the marketplace over time. Today that interest payment costs us approximately \$130 billion a year. Substantial annual addition to the national debt (now about \$600 million per day) will drive the interest costs as high as \$200 billion a year in the near term -- by 1986 or 1989. That would constitute a charge to each man, woman and child in the United States of \$870 per year -- year after year -- for interest alone. That is structural, indeed.

* Deficits cause private borrowers to be "crowded out" of the financial marketplace. Each year a portion of all individual and corporate earnings flow into savings and investment. This new money can go into home loans, business borrowing and investment, consumer credit, etc., all of which sustain real economic growth.

If the federal government's deficit proclivities force it to borrow money, government competes for those savings and investment dollars, cutting down the amount available to, or "crowding out," the private sector. Federal borrowing, including loan guarantees, rose from about 19% of all borrowing in 1970 to nearly 68% (42% direct Treasury borrowing and 20% loan guarantees and loans to federally sponsored agencies) in 1983.

The U.S. Treasury Department, unlike the home buyer, the small businessman or the car purchaser, will pay any interest rate demanded by the market to obtain the funds necessary to operate the federal government. Private borrowers simply get out of the market when the price of money becomes prohibitive. You have therefore the ironical situation in which the master (taxpayer-citizen) is driven out of the market and prevented from competing by the actions of his servant (government). To prevent "crowding out," it is urged, taxes must be increased to eliminate the deficit. Let's analyze: We take money from somewhere in the form of new taxes. From consumption? Maybe some. But also, in part, from funds en route to that savings and investment pool. So we have simply "crowded out" before, instead of after, by substituting taxes for borrowing.

* Deficits cause higher interest rates. Common sense and political reality support this view. Deficits, inflation and high interest rates forge a common bond in the minds of many. Inflation expectations undoubtedly have contributed to abnormally high real interest rates. Fears of debt monetizing by the Fed in response to political pressures to ameliorate the effects of huge, relentless deficits, fuel such expectations.

But we need not merely follow our "gut" instincts in this. We have some studies which link deficits and interest rates:

- A Treasury Department study suggests that for every \$100 billion added to the national debt, interest rates are driven up by .2%.
- A Claremont Economic Institute study concludes that the impact is .6%.
- An earlier study by Otto Eckstein and Martin Feldstein suggests that the range is .15% to .3% for each \$100 billion of deficit.

- In another approach, William DeWald of Ohio State correlated the deficit, as a share of GNP, and interest rates. He concluded that for every 1% increase in the deficit as a share of GNP, longterm interest rates have risen by 1%.

These percentages may seem modest on an annual basis, but the cumulative effect can be significant. Over five years the cumulative effect on the private sector of paying a higher interest rate each year can be sizable. Each of us has to pay for the government's action in bidding up the price of money.

* Deficits restrict capital formation. In some respects, this is simply another dimension to the crowding out process, but not exactly. Obviously, competition for funds in the marketplace is not solely between public and private borrowers. Those seeking investment (equity) funds are omnipresent. The combination of unusually high interest rates and uncertainty about the future are precisely the elements which tend to discourage risk-taking. New venturers are especially vulnerable (with the possible exception of very glamorous high-tech ventures). Existing businesses, which provide the bulk of the new jobs in our nation's economy and which frequently require infusions of capital, often cannot command new equity funds.

Alan Greenspan notes another unusual characteristic of the present recovery in terms of capital expenditure/formation. In his words, there has been a "suppression of long-lived asset expansion." Capital investment in computers and other rapid-obsolescence equipment has been the hallmark of this recovery to date. Greenspan attributes this to high interest rates and the uncertainty of current spending and deficit practices.

* Deficits are immoral. Professionally-managed focus group studies commissioned by the National Tax Limitation Committee in 1981 revealed a consistent theme about deficits, regardless of geography,

age, sex or other demographics of the study groups. The overriding, common thread was that to consistently "spend more than you take in" is immoral, and unfair to those yet unborn. Peter Grace, chairman of the President's Private Sector Survey on Cost Control, echoes this view: "This is a situation that is unacceptable not only on grounds of moral responsibility but, even more compellingly, on grounds of moral responsibility toward future generations that will bear the heaviest burden."

There's a basic sense of outrage about deficits. Also, there is a high level of frustration at Congress' seeming inability to do anything about deficits. Whether deficits ought to be addressed in a moral context is not the point. A lot of people already have put them in that context. The people's sense of well being, their view of the efficacy of their government, their sense of participation in and control over critical government activities are all enormously relevant to the future of self government.

Mr. Chairman, while the degree of their importance may be debated, it is clear that deficits do matter -- substantively and psychologically. The immediate implications for economic recovery are serious, indeed. A resumption of high interest rates and rising inflation and return to a "foxhole" mentality could spell disaster, aborting what otherwise might be an extended, robust period of economic growth. Our emphasis on fiscal policy is not intended to suggest that the monetary practices of the Federal Reserve are unimportant. Obviously, the Fed's control over growth of the money supply has a significant impact on general economic activity, the inflation rate, interest levels, etc.

The interest rate, crowding out and capital formation implications of continuing, unprecedented \$200 billion deficits are real and risky. Each annual deficit is the source of a permanent increase in the debt service structure of subsequent yearly budgets.

Deficits are popularly viewed as immoral; consistent, extraordinary deficits which are met with rhetoric, not substantive action in Washington, raise serious concerns about the future of representative government.

Among the solutions offered, further taxes could be as destabilizing to the economy as doing nothing; assuring a revenue increase by rescinding indexation of the personal income tax (which is scheduled to take effect January 1, 1985) would provide government with an incentive to reignite inflation so as to enjoy a windfall of revenues without explicit tax increases. If history is any guide, a tax increase would be merely a springboard to higher spending, not a means of closing the deficit gap.

In fact, the deficit is so serious that its solution cannot be achieved overnight without a destabilizing effect in its own right. What is needed is that we embark on a credible course to deficit reduction/elimination, one which offers certainty and instills a sense of security in private decision makers here and abroad, our economy and the recovery should be in safe hands. There is really only one course of action that will enable us to walk this narrow policy tightrope: congressional approval, state ratification and implementation of the Tax Limitation/Balanced Budget Amendment to the United States Constitution, coupled with a modified freeze on spending, allowing recovery-induced tax revenues to play "catch-up."

This five-year plan is the Hatch/Gramm Budget Proposal, which was offered in the U.S. Senate last year and is the subject of the U.S. Chamber's Economic Outlook - Federal Budget Deficits: Myths & Reality (December 1983 - January 1984). Through modest restraint on the growth of "entitlements" and a reasonable freeze on non-defense discretionary spending, a federal cash flow balance is achievable by 1988 - 89. The plan presumes some savings from vigorous congressional oversight (the Grace Commission report would be one "roadmap" to

improved efficiency) and is premised on the common sense notion that if Congress wants to spend more on one program, it must reduce another. The Hatch/Gramm package, with its emphasis on gradualism, and the Tax Limitation/Balanced Budget Amendment, with its emphasis on permanence, together offer the long-term solution out of our fiscal quagmire.

Mr. Chairman, both the Amendment and the Hatch-Gramm package are needed because they are mutually reinforcing. While the Amendment is working its way through the ratification process, Hatch-Gramm will be in place to answer those people who say that it is impossible to reach a balanced budget before the Amendment becomes law. And the presence of the Tax Limitation/Balanced Budget Amendment will give Congress the political backbone and will to follow the Hatch-Gramm roadmap to financial stability.

Do deficits matter? Indeed they do, Mr. Chairman, and it's way past time to stop talking and start acting to eliminate them.

Senator HATCH. Thank you so much, Mr. Uhler.
Ms. Cox.

STATEMENT OF CAROL COX

Ms. Cox. Senator, as you know, our committee does not come to its opposition to the constitutional amendment because we do not share your concern with budget balance; we do. We have spent the last 1½ years and what is, by our measure, a substantial amount of resources—nowhere near as much as Lew has spent trying to get this constitutional amendment passed and ratified, but a substantial amount of money, by our standards, in a public education campaign, trying to explain to people just how dangerous are the deficits we face and how hard are the choices that will have to be made to fix those deficits.

I must say, however, responding to the last point that Lew made first, I had heard before in the debate in 1981 that if we cut taxes, we could increase revenues and we could, therefore, enjoy a larger nominal Federal expenditure with less of a burden on the economy.

I have not before today heard anybody suggest that if you pass a constitutional amendment to require a balanced budget, revenues would increase. And I basically distrust painless solutions, Lew; I am sorry.

The deficit problem is here and now. Whether a constitutional amendment took 2 years or 7 years to ratify, I fear and our committee fears that the passage of such an amendment, without

regard to how you feel about it on its merits, would create the illusion that Congress had done something about the deficit problem. It could further delay dealing with the hard choices that must be faced if indeed you are going to make deficits go away.

We fear the amendment could result in increased Government activity, but in ways that are very hard to identify. This amendment focuses entirely on Federal revenues and Federal outlays. What is to keep the Federal Government from cutting unemployment compensation costs or health costs simply by mandating that private employers must give 6 months' notice before they lay anybody off, or that they must provide health insurance for all their employees and their dependents for their lifetimes?

I suggest to you that while that sounds farfetched, faced with a constitutional imperative and politically impossible choices, it is not beyond the realm of possibility that Congress would shift, through legislation and regulation, costs to the private sector that are now borne by Government.

Those costs would be no less burdensome, nor would they be less onerous because they were borne in that fashion. They would not be less of a drag on the economy; they would be harder to identify, and in our system of government that is dangerous.

I would suggest to you that you think about the question of judicial involvement as you approach this constitutional amendment. Who has standing to sue and when? Craig Stubblebine, who will talk to you later today, once said to me that there are those who worry about constitutional precepts and then there are people like me who worry about the minutia, about how those constitutional precepts actually should be implemented and how they would work.

Lew spoke earlier of Bob Bork. I would only remind you of something Judge Bork wrote recently. Judges do do windows; you ought to think that as you write constitutional law.

This amendment could, in our judgment, lead to higher spending. It is not beyond the realm of possibility, and, Senator Hatch, you have seen it on the floor of the Senate many times, that you could have 45 or 46 votes for a balanced budget and be absolutely unable to get the other 5 or 6 votes you needed to adopt that balanced budget.

And it is not beyond the realm of possibility, and indeed based on my experience on the Senate floor, it is entirely likely that if you needed 30 votes to adopt an unbalanced budget, and you were surely going to adopt an unbalanced budget, those 30 votes would cost you more than would 5 or 6.

That is real concern about the requirement for a majority vote for a balanced budget and a supermajority vote for a budget that is out of balance.

Requiring that the Federal budget be in balance every year suggests a major revision in the existing tax code. Our tax law is employment based, it is income based, it is profit based. In periods of recession, our tax revenues fall off and in periods of economic recovery they go up.

The automatic stabilizers built into the Federal budget operate about 75 or 80 percent on the revenue side of the budget, and if you adopt an amendment such as this, I suggest you will need to look

very seriously at the basic tax law of the land because it seems to me that the economic stabilizers built into the budget are inconsistent with the concept of a budget that is balance every year.

The amendment that you propose requires Congress and the President to ensure that actual outlays do not exceed statement outlays. If you will bear with me for a minute—let me walk you through a sample problem that we constructed to illustrate some of the difficulties with implementing that particular requirement.

In May 1980, after much ballyhoo and two submissions of the Presidential budget, a majority of Congress and the President hailed the passage of the first "balanced budget" in more than 10 years and only the second one in many, many years in this country.

I do not need to remind you, Senator Hatch, that even then there were some people who said the economic assumptions on which that budget was based were hokey; that some of the technical estimates in the budget were hokey; and that, as a matter of fact, that budget was not really in balance.

Senator HATCH. I was one of them asking.

Ms. Cox. I remember well. I ask you seriously: Should someone then have had the authority to decide whether you were right or wrong, whether or not the budget was in balance, and therefore whether Congress had met the first of the necessities that would be embodied in the Constitution under this amendment?

In November 1980, Congress did acknowledge, through passage of a second budget resolution, that there would, in fact, be a deficit in fiscal 1981. There were differences over the size of that deficit.

Henry Bellmon, who would shortly leave the Senate, having chosen not to run for reelection, and Pete Domenici, who would be the chairman of the Budget Committee when the Senate reconvened in January, argued that the deficit was really much larger than was contained in the resolution and that there ought to be further reconciliation, at a minimum, to deal with the deficit on the face of the resolution, and preferably to provide the balanced budget that had been promised in the first instance.

Congress rejected the Domenici-Bellmon position and ratified the proposition that we would have, in their estimate, a \$27.4 billion deficit. At that point you had a lameduck President and you had a majority in the Senate that was Democratic, knowing full well you would have a majority in the Senate in January that was Republican because this was after the election.

At that point should somebody have decided that Congress and the President had a responsibility to ensure that the budget was in balance; and should "in balance" have meant that the actual outlays would not exceed statement outlays, and was the \$27.4 number right or was the \$50-odd billion Senators Bellmon and Domenici were talking about right?

At that point you had a lameduck President, you had a Senate majority that would change as a result of the election, and you had a lot of contention over the size of the deficit. Who should have done what to meet the constitutional requirement?

You move on to January 1981 and President Carter's budget predicted a deficit of \$55.2 billion. That was a very few days before he left office. Should he and the Congress then have done something

to ensure that actual outlays would not exceed statement outlays, or indeed that the budget would be in balance?

Finally, assume that somebody did something more or less mechanistic to ensure that actual outlays did not exceed statement outlays, and that what they did was based on the May 1981 estimate that actual outlays would be \$58.1 billion, more than statement outlays. In November 1981, we found that the actual excess of outlays over statement outlays contained in the initial budget resolution was \$40.9 billion; the rest of the \$54.9 billion deficit was accounted for by lower revenues than were contained in the original budget.

It you had acted in the meantime to constrain outlays to the level contained in the statement, and you had cut spending more than was necessary to accomplish that objective, would there then be some presumption that you should somehow go back and try and restore some of that spending after the fact?

I do not know the answers, but I am troubled by some of the questions. I understand this is a somewhat simplistic exercise, but it does highlight some of the very real, not just technical, not just political, but combination of budgeting and political problems that are at the heart of what this kind of government is all about.

Senator HATCH. Let me ask you one question that I have been concerned about. Since the Budget and Impoundment Act was enacted in 1974, how many second concurrent budget resolutions have we had?

Ms. Cox. We had one every year through fiscal 1981, and have not passed a second budget resolution since.

Senator HATCH. So in the last 4 years, we have not had one?

Ms. Cox. No. In fiscal 1982, fiscal 1983, and fiscal 1984, we had automatic second budget resolutions. The first resolution contained language making it the second budget resolution.

Senator HATCH. So we did not formally pass a second concurrent budget resolution in any of the last 4 years?

Ms. Cox. No, sir.

Senator HATCH. In effect, the Budget Act really came into effect in fiscal year 1976?

Ms. Cox. That is correct.

Senator HATCH. So in 1976, 1977, 1978, 1979, and 1980, I believe you could make a pretty good case that the budget resolutions we did pass were proven to be inaccurate. We were actually off the mark in every case.

Ms. Cox. In the first few years, they estimated higher Federal outlays than turned out to be the case.

Senator HATCH. Yes, but they were still off the mark as far as budget balance.

Ms. Cox. And in later years, we underestimated outlays in the budget through a combination of having wrung out the outlay overages on the one hand and assuming a more optimistic economic scenario than actually came to pass on the other.

Senator HATCH. It is difficult to find out exactly where we are economically or who is the big spender around here and who is not. I get a big kick out of these outfits that take 20 votes and say this man is fiscally conservative and this one is not here in the U.S. Senate or in Congress.

There is no way you can do that. In order to analyze the economic votes, you have to analyze at least 200 votes that affect the economy and, in most cases, directly impact against the economy.

I do not mean to start questioning in advance, but I feel I must mention this. What bothers me about what you are saying is that you admit we have not been very accurate and the budget process can be inaccurate in the future.

We can fuzz up the process and we can ridicule the process. By ridicule, I mean playing with the numbers, as you used the term, and having screwy technical estimates, which we seem to have from time to time. I do, however, believe there is a genuine, bona fide effort put forth by the various groups that work very closely with the budget, including the Congressional Budget Office.

You seem to be saying we need to do something now, but the balanced budget/tax limitation amendment, or whatever balanced budget amendment we come up with, will give a false hope that is at least 4 or 5 years away. You have also said if we do not do something now we will be in trouble, which is true.

Yet, Strom Thurmond has been advocating a balanced budget amendment since 1946. In other words, by your same logic, if we do not enact it now, 5 years from now we will be in the same situation where the Congress will be screwing up and playing with the numbers, being off the mark in almost every case. The mere fact that we might be off the mark is not, to me, a good argument. Congress will, in essence, not balance the budget anyway.

It seems to me there is a bias in favor of spending in the Congress. You do not disagree that there is a bias in favor of spending, do you?

Ms. Cox. Senator, I do not disagree for a moment that there is a prospending bias. I believe that there are ways to address that bias without—

Senator HATCH. How would you do that without a balanced budget amendment? That is what I am getting at.

Ms. Cox. You may recall that some years ago I suggested a simple rule change. As a matter of fact, I suggested it again last year to Senator Domenici. I suggested they might want to consider it right after you passed the constitutional amendment because the mood on the floor might embarrass people into agreeing to it, quite frankly.

Senator HATCH. That is right.

Ms. Cox. I suggested that you provide a point of order, similar to the 311 point of order in the Budget Act, that would say, it is not in order to consider legislation if that legislation would cause the amounts in the budget allocated to the reporting committee or subcommittee to be exceeded, unless you either, when you waive that point of order, decide to add to the budget aggregates to accommodate that spending or take the money away from some other committee.

Senator HATCH. Either you increase taxes or decrease spending.

Ms. Cox. In other words, you force Congress, at the point in time when they consider legislation that creates spending or taxes, to decide consciously if they are willing to add to the budget aggregates to do so or if they are willing to take the money from some other committee.

Senator HATCH. That is a good procedural suggestion, but you are far more likely to get there with a balanced budget/tax limitation amendment than you are under present circumstances.

These fellows are never going to give up any of the rights they have right now. If they know they have to face an electorate based upon 5 or 6 votes rather than 200 votes, they may very well be willing to go with that type of a point of order or rule.

Ms. Cox. Senator, no.

Senator HATCH. That is not inconsistent with the amendment at all.

Ms. Cox. I realize they are not mutually inconsistent. The difficulty as between your position and ours—and it is simply a question of what you believe about human behavior—is that, if I were to draft a constitutional amendment to balance the budget—and I suspect it would have a certain amount of tax limitation benefit—rather than going to the budget, which, does not create any spending or tax law at all, I would draft an amendment that says Congress shall pass no law that causes the budget of the United States to be out of balance or to be further out of balance than it is if the budget is out of balance when the amendment is ratified.

That is “pay as you go” with a vengeance, but it gets to what creates deficits: the laws that create spending and taxes. Lew has said people say that the budget deficit we have now is structural; it is because current spending and tax laws can never produce a budget that is in balance.

To cut back these deficits and to bring the budget into balance, there are only two things you can do. You can cut spending and/or you can raise taxes. When you talk about spending cuts, I do not need to tell you you are talking about the rate of growth in defense, you are talking about the rate of growth in Social Security, you are talking about the rate of growth in medicare, you are talking about veterans programs, you are talking about farm price supports, and you are talking about big-ticket items where the money in the Federal budget really is.

Senator HATCH. Well, looking at this amendment, though, under section 1 the last sentence does precisely what you said you would write it to do: “The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement.”

Ms. Cox. But what I am saying to you is that your amendment says they “shall ensure”—and that takes you back to this example I walked you through.

Senator HATCH. We could be wrong in the example.

Ms. Cox. The question I have for you, Senator, is how this constitutional amendment—could or would work. Believe me, I have a great deal of sympathy with what it is you want to accomplish. I just do not believe it can be accomplished in this fashion.

Senator HATCH. You and I differ because I do not believe, with the 50 years of what we have gone through, and especially the last 20, that you can do it simply by encouraging Congress to face the deficit problem now. They will not do it.

I mean, every Member of Congress has certain special interests that he simply has to protect in his or her own State. Every

Member of Congress has pressures on him or her from various special interest groups.

It is nice to say we have got to do something about deficits and we have to do them now. Yet, each year since the Budget and Impoundment Act has come into being, we have failed to do anything about deficits. It has gotten progressively worse even after the Budget and Impoundment Act.

Now, I have come to the conclusion that is a very bad act. I do believe it is a step in the right direction, but it is obviously not sufficient.

Mr. UHLER. Carol, I want to clarify just one——

Ms. COX. Let me just finish.

Senator HATCH. Let her finish her statement, and then I will turn to you.

Ms. COX. You will have lots of time. I do not mind this exchange, but there were a few points that I wanted to make.

Senator HATCH. Yes. I will make this the last question; it is just that it was so interesting.

Ms. COX. It is not a question, of whether Congress will make appropriations decisions, the only answerability for which is at the polls. I do not think that is a question that can be limited just to the issue of the budget and deficits we face.

I think the problems we are facing with the budget and with the deficits could serve as a metaphor for a lot of problems we are struggling through in this system of Government.

I guess the ultimate, bottom-line question, Senator, is who would decide, and at what point, whether or not you all and the President were in compliance? You cannot, I do not think, give that role to some other external body without very substantially altering the system of Government.

Senator HATCH. But we are not doing that here with this amendment.

Ms. COX. I understand that. If you do not give that role to some external body, I do not understand how the system of discipline would work and whether, in fact, we do not run the very real risk that it would not work; that politicians, in their inventiveness, would find ways around it; and if they did that, whether we would not pay a very high price indeed in terms of the faith of the American public in this system of Government.

Senator HATCH. We are paying a high price now. The American public does not believe in the Congress at all right now, and there is good reason for it. Year after year we tell them we are going to go for a balanced budget and we fail. We passed a Harry Byrd amendment that said we had to balance the budget in fiscal year 1980.

It was just ignored the day after it was passed. Everybody voted for it on the Senate floor, except one or two, and yet that is the way it is. People who just say we have got to do something about the deficits but who are not willing to get the Congress to do something about them, it seems to me, are not answering the question.

We are not, it is true, specifying the specific procedures of any new budget process required by Senate Joint Resolution 5. All we are doing is setting forth a broad constitutional obligation.

It is up to Congress to determine what are the best procedures or day-to-day procedures for satisfying this constitutional obligation. You have suggested one that the Congress, in its own institutional realism, might have to adopt. It will never do that, in my opinion, until you get something like a balanced budget amendment on the books.

Now, whether it will be this balanced budget amendment or something else, I do not know. This one basically contains that which you said you would like one to have, if you were to write a balanced budget amendment.

Carol, you and I have debated this and chatted about it before. I have a lot of respect for what your organization is trying to do; I really do. I believe you have put in a lot of time and effort. You are doing some good things. You are meeting with people all over the country and are not afraid to stand up and explain this budget process.

But what bothers me is almost everybody who supports the idea says we simply have to do something about these unbalanced budgets and deficits without admitting they have 50 years of history showing we are simply not going to succeed without some form of constraint that would cause us to even up this bias. I cannot see any other form of constraint.

I have to admit there are balanced budget amendments I believe could be much stronger than this. However, I cannot think of any that are much better than this that will literally do what this one will with the least amount of change in our political structure.

The mere fact that budget committees and Members of Congress may be off the mark as they try to apply this balanced budget/tax limitation amendment is not enough to say that is a reason not to have the amendment. There is going to be an awful strong constraint on them being off the mark, and if they are, they will have to correct that mark.

You and I both know that there is no constraint on them right now at all without a balanced budget amendment, and I do not see it ever happening. Then again, maybe I am being too pessimistic.

Ms. Cox. Senator, let me make two observations.

Senator HATCH. Yes.

Ms. Cox. What I say here I say not only for myself, but for our committee including our Republican cochairman John Rhodes, who I think you would agree share your concerns.

Senator HATCH. They do.

Ms. Cox. And John Rhodes says he wishes he had the money that Congress spent on yellow pads he used trying to write a constitutional amendment that he thought would work to balance the budget.

But because I do do windows like Judge Bork, may I, in closing, make some specific observations about the specific admendment that, provided you proceed with it, you may want to take a look at.

The first question I want to ask is: What happens if Congress adopts no statement?

I think it is quite likely that in the absence of some serious deficit reduction effort this year, Congress will find itself totally unable to adopt a budget.

Senator HATCH. They are not going to adopt a budget this year; we all know that.

Ms. Cox. And I do not know what would happen in the presence of this amendment if Congress just did not act. That is one question.

The second question is I believe that the amendment defines the base period based on which you measure the change in national income for the purpose of defining tax receipts. I am not at all sure it defines the base period compared to which you take that and apply it and decide what are next year's revenues.

It appears to me that it defines the base period for the purpose of extrapolating the rate of increase allowable, but that it does not define the base period against which that should be applied. I may be mistaken, but that is my reading of the document.

The third one, and I ask the same question over and over, but I do think it is important to ask yourself: Who would decide whether or not the budget was in balance and on what basis? That goes to Judge Bork's point that judges do do windows. As Rudy Penner put it, we do not need a Supreme Court with an economist deciding whether or not the economic assumptions underlying the Federal budget are constitutional. That is an awful nightmare and I think it is a question you need to ask.

Senator HATCH. Let me just go back to your base period point. Last year, in 1982, when we debated this, Senator Domenici was concerned about the same thing, so we accepted his amendment which I believe basically defined it.

He wanted a flexible, not rigid base period. We defined it:

Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less than six months nor more than twelve months before such fiscal year.

I might have preferred a more specific base period, but he wanted the flexibility and felt that would be a better approach. I believe we have accommodated that concern, though maybe not as well as you would have liked.

Ms. Cox. With all due respect to Senator Domenici, I think that that is an extremely flexible base period.

Senator HATCH. Well, I do, too. In fact, I would have preferred not having it in there, but that presupposes it may be inconsistent from year to year. It is flexible, but at least it is there.

Ms. Cox. I think it also suggests you could have a period longer than a year as your base measurement. But I only raise the question because I think it needs to be raised. I do not even mean to take a position as to whether—

Senator HATCH. I am glad you raised it because it has been a focal point in this debate. However, it does not make any difference if it goes beyond a year so long as you have a consistent period, which is what we think it will come down to. Any system that works will have to do that.

Ms. Cox. As I said, I do not even take a position as to whether it is right or wrong.

Senator HATCH. Sure.

Ms. Cox. It is only a question that I raise.

I would like to raise a point because I think it is a very important one with regard to the language that says that in order to increase receipts above the level of the increase in national income, the House and Senate must ratify that decision by a vote directed solely to that purpose.

I want to ask you if you mean to preclude a bill that, for instance, cut the growth in Social Security and medicare, and also increased taxes; if it is really your intention to require Congress to have a separate bill directed solely to the purpose of raising taxes or whether it would satisfy the need you mean to satisfy here if that were somehow packaged in a piece of legislation that also cut spending?

I ask that because I think it is a serious issue in terms of how you actually get things done around here.

Senator HATCH. It is an attempt to focus on that issue and, you know, to uncloud the whole area.

Ms. Cox. I understand the desire for the need for a conscious vote—a person going on record to raise taxes. But do you really mean to prohibit their putting anything else in that bill, even spending cuts, because I think that is what the language of the amendment on its face would do?

I am not inclined ever to write anything that says any bill cannot also include spending cuts. I do, after all, think that that is an appropriate area for consideration, as well as tax increases.

Senator HATCH. On that point, one of the main purposes of the amendment is to have at least one unambiguous vote on these issues. One of the points you raise is that you are not sure putting people on the spot at the polls is the way to do this.

I am not sure it is not the way. I believe it is probably the only way because the only thing I have seen these people fully respond to around here is what their futures are at the polls. Frankly, it is the number one consideration around this place, and validly so.

Ms. Cox. I think you misunderstood me. I do think putting people on the spot at the polls is the way to change the system.

Senator HATCH. I did not interpret your statement to mean it is not a good thing. I interpreted it to mean it may not be the only thing. I agree with that, but I believe narrowing it down from 200 votes to maybe 1 to 6 votes a year will really help with regard to the political pressures to arrive at a balanced budget, just like a Governor has to come up with a balanced budget.

One of the amendments that has been very ardently offered during the debate is Senator Ford's. Senator Ford feels that the President, if we are not to be phony in this, ought to be forced to offer a balanced-budget amendment for each fiscal year he is responsible for offering one. I am not sure that is wrong. We are going to certainly look at it.

Ms. Cox. Another kind of nit-picky question: The amendment prohibits on its face Congress from mandating States to engage in additional activities unless they are recompensed for those additional activities.

Is it the intent of that language to prohibit Congress, as well, from mandating that States expand activities in which they are already engaged unless they are similarly recompensed?

That is just a question to you; again, something on which I take no position.

Finally, it appears to me that the outlays and revenues to quasi-Federal agencies, like FDIC, would not be counted for the purpose of determining budget balance under this amendment; clearly they are not under current statute, which declares them not to be Federal revenues or Federal expenditures.

Senator HATCH. Are they counted anywhere now?

Ms. Cox. No; they are, by law, declared not to be either Federal revenues or Federal outlays.

Senator HATCH. We do include offbudget in here, but I bet we do not include that.

Ms. Cox. Well, the only reason I raise that issue is that in States where you do have balanced-budget requirements, there has been a tendency to create quasi-public entities with borrowing authority whose expenditures and borrowings are not reflected in the State budgets.

And I am not at all convinced that if you adopt an amendment like this, you will not see similar behavior at the Federal level. I once said facetiously that the best candidate for that would be the defense budget, since it has no revenues associated with it and a heck of a lot of outlays. If you created a quasi-public agency to carry on the national defense, it would not be hard to balance the residual budget.

That is a facetious comment, but I do think there are areas, like Federal aid to education and the dams and water of activities of the Federal Government, where it is not farfetched to envision Congress creating quasi-Federal agencies to carry those out. And I do not think that is desirable from a public accountability point of view.

Senator HATCH. Well, thank you.

Lew, you wanted to respond to one point of Carol's?

Ms. Cox. He has written a speech.

Mr. UHLER. She has made a lot of points and I have taken lots of notes.

One point of clarification that is essential as proceed here and deliberate on this is to understand the way in which the amendment does, in fact, work in contrast with current budget practice.

Carol is one of the smart, bright people in this whole business of budget making and budget watching and analysis. One of the problems the Congress has is following two bouncing balls during the time that it considers a fiscal year and its budget, and while that fiscal year unfolds, looking at both expenditures and at revenues.

Really, the Congress, having made some decisions about a fiscal year, goes on to look at the next fiscal year without controlling or managing the flow of expenditures for the prior fiscal year.

Those two problems are addressed by the structure of the amendment. It is, in fact, a formula amendment. By the simple use of a hand-held calculator, you can determine what the tax receipt limit for the affected fiscal year will be, and hence what the spending limit for that year will be. So you have the data; you know what you need.

Now, the last sentence of section 1 is, we feel, very important, of course, as you have already underscored and as Carol has men-

tioned. As the fiscal year unfolds, both the Congress and the President have a responsibility to ensure that actual outlays of the Government, both on and off budget, do not exceed that outlay statement limit.

So, now you have the President and the Congress working together to monitor expenditures as the fiscal year unfolds. Having that constitutional responsibility will lead the Congress, of necessity, to develop that set of monitoring procedures, reserves and other things which will enable them to discharge that constitutional responsibility during the fiscal year.

Finally, we will have Government doing what we have to do in our families and our businesses. We simply cannot plan how we are going to let a year work out; we have to work at that year as it unfolds.

So, as we are planning at the Federal level for the next fiscal year, we are also watching what is happening to the fiscal year with which we are currently involved; hence, I think, the beauty of the design. The amendment is simply going to enhance the very budget process about which Carol is so deeply concerned.

Senator HATCH. Mr. Reiss.

STATEMENT OF STEVEN A. REISS

Mr. REISS. Thank you, Senator Hatch. On behalf of the Association of the Bar of New York City, I would like to thank you for the opportunity to testify. We have been here before, or we have been in similar hearings before. In fact, this is the third time we have been asked to testify on proposals to balance the budget through a constitutional amendment.

Now, the Association's position has consistently been that a constitutional amendment requiring a balanced budget would be an unwise and unworkable cheapening of the most admired and successful legal charter in the Western World, if not in the entire world.

Our belief that it would be unwise to amend the Constitution to require a balanced budget stems not from a judgment concerning the economic wisdom of such fiscal policy, but rather from our view of the role of the Constitution in our political system and our belief in the capacity of elected representatives, under the Constitution as it exists now, to choose whatever economic policies they deem appropriate to the circumstances of their time.

Because such legislative latitude is particularly appropriate in areas of fiscal and economic policy with which Senate Joint Resolution 5 is concerned, we would oppose a balanced budget amendment even if there were a present consensus on the desirability of a balanced budget.

There seems to be an assumption that there is such a present consensus in this room, but there is no such present consensus. We have noted before and I note again that the economic impact of the proposed constitutional amendment is by no means certain. The potential economic effects are hotly debated by economists and politicians, and there is no clear consensus.

I can give you a list of Nobel Prize economists who have testified that from an economic standpoint, balanced budgets do not make

sense. The question is not whether someone is right or wrong. The question is whether there is agreement, and there is not today.

If we cannot agree on the desirability of a balanced budget for the country's situation today, can we in good conscience impose the requirement on future generations? We should not forget, to paraphrase Chief Justice Marshall, that it is a Constitution we are amending.

The budget-balancing amendment proposed in Senate Joint Resolution 5, or any balanced budget amendment we can think of, for that matter, would be a wholly inappropriate addition to the Constitution.

History shows that the process of amending the Constitution has been sparingly used, almost always to correct what Madison called discovered faults in the original Government structure or to protect against the infringement of fundamental rights.

Of the 26 amendments that have been ratified since 1789—the only 26 amendments we have to the Constitution—12 protect the right of individuals; 5 extend the right to vote; and 7 amendments and a section of the 14th amendment deal with the structure of government.

The only exceptions to this pattern are the 18th and 21st amendments, imposing, then repealing, prohibition. The budget amendment is more like the prohibition amendment than any other.

Senator HATCH. What about the 16th amendment?

Mr. REISS. The 16th amendment, which allows Federal taxation?

Senator HATCH. Yes.

Mr. REISS. I would probably consider that a structure of Government amendment, but I guess we could argue about that. It is certainly nothing like this amendment in terms of its specificity, and it certainly was not addressed solely to the internal workings of the legislative branch of Congress. It was passed in response to previous Supreme Court decisions that had severely restricted the Federal Government's ability to raise needed revenue.

Like the prohibition amendments, the proposed budget amendment neither states fundamental principles to which we firmly and irrevocably commit ourselves as a Nation, nor corrects errors in the constitutional structure of government or safeguards individual rights.

Like the prohibition amendments, the proposed budget-balancing amendment reflects much less basic and more transitory concerns which, however popular they may be now, do not warrant elevation to constitutional status.

The issues raised by the budget-balancing amendment are best left to the political process. The Constitution should not be used as a fig leaf to cover present political embarrassment over the size of the Federal deficit.

The proposed balance budget amendment may result in a radical departure from present constitutional norms by drastically altering the balance of powers among the Federal Government branches.

Under the present constitutional structure, the budgetary process is the responsibility of Congress and the President, and not the courts. The proposed budget-balancing amendment seems very likely to change all that.

According to the report of the Senate Judiciary Committee on Senate Joint Resolution 58, which was, as I am sure you know, Senator Hatch, the predecessor to Senate Joint Resolution 5, not only is judicial review of the budgetary process not prohibited, but it is relied upon as a check on—and these are the words of that Senate committee report—“the most serious and unambiguous violations.”

Judicial enforcement of the proposed amendment seems destined to give rise to an annually recurring crop of lawsuits challenging particular expenditures and appropriations and every attempt to raise or lower taxes.

Given the vagaries of the “standing” and “political question” doctrines, those principles can hardly be counted on as a bulwark against these lawsuits. With respect to standing, there is a substantial possibility that any taxpayer would have standing to challenge expenditures, appropriations or congressional definitions, such as “national income,” claimed to be in violation of the amendment.

Senator HATCH. Steve, would you hold for just a second? The distinguished chairman of the Judiciary Committee only has a few minutes here today and has got to go over to the Meese hearings, so he would like to get a statement in the record.

The CHAIRMAN. Mr. Chairman, I ask unanimous consent that my opening statement be included in the record.¹

I have two other meetings that I have got to go to in just a few minutes, so if you will excuse me.

Senator HATCH. Mr. Reiss?

Mr. REISS. Thank you, Senator Hatch.

Like the doctrine of standing—and I realize these are fairly technical legal issues, but they really are critical to the functioning of this amendment—the political question doctrine also cannot be relied on to insulate the judiciary from the budgetary process.

The political question doctrine holds that certain questions arising under the constitution are to be determined solely by the political branches of government—the Congress and the President—and not by the courts. The contours of the political question doctrine are very unclear, however.

Given that at least some judicial review is envisioned under the proposed amendment, we seriously doubt that all questions arising under the proposed budget-balancing amendment would be held to be political.

Our courts are ill-equipped—and I know this is one of Carol's points—to handle these fiscal and budgetary matters which are now generally excluded from their jurisdiction. More important, judicial involvement in the budgetary process would alter for the worse, in our view, the present system of checks and balances among the three branches of government. It would add a new and undesirable element of uncertainty to the entire budget process.

Restricting the ability of the courts to enforce the proposed amendment is, however, no answer. The greater the extent to which the courts are barred from enforcing the proposed amendment, whether by the standing or political question doctrines or any other doctrine, for that matter, the greater is the ability of Congress and the President to ignore the dictates of the amendment.

¹ See page 93.

The elimination of judicial involvement in the enforcement of the amendment would thus have the ironic result of removing the major benefit being proffered for passing the amendment in the first place: the creation of a constraint outside the legislative process against passing an unbalanced budget.

Let me just also address a point that was just brought up on the question of who actually does enforce the process envisioned in the proposed amendment. That responsibility is shouldered, Senator Hatch, as you noted, by both Congress and the President.

That shouldering of responsibility raises whole new questions about whether this amendment drastically affects the President's ability to impound funds. If you have a President who has very different political priorities than the Congress, the President may choose to impound funds for a program the President does not like and Congress does like.

This amendment makes absolutely no allocation between those two branches with respect to who holds back the horses and who lets them go. You can have a Congress and a President at each other's throats over who is keeping which funds where.

Senator Hatch, I know you are familiar with impoundment problems. Virtually every Congress and every President in the last 50 years have had some experience with the issue, and as I said, this amendment seems to open that whole can of worms to a very great extent.

Senator HATCH. We will make that rather clear, though, in the report itself.

Mr. REISS. Well, with all due respect, Senator, I must say that Senate reports have not had an overwhelming influence on the Supreme Court's construction of constitutional amendments.

Senator HATCH. I read it before: "Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement."

Mr. REISS. But, Senator Hatch, that does not say who does what.

Senator HATCH. There is impoundment authority under the first article.

Mr. REISS. I think the Supreme Court has never definitively made that clear.

Senator HATCH. I do not see where it is clear and do not know anybody who has ever argued it is. Can you give me a reference to a case?

Mr. REISS. I could certainly supply those afterward.

Senator HATCH. Would you do that because I do not know of any?

Mr. REISS. Yes.

In addition to those two questions, I should note that the three-fifths override provision of section 1—

Senator HATCH. Let me just interrupt you one more time.

Mr. REISS. Yes.

Senator HATCH. I do not mean to keep doing this.

Mr. REISS. Sure.

Senator HATCH. All this amendment does is maintain their existing powers, whatever they may be. It does not give them any new

ones or original ones. They have to act within the respective powers they have in articles I and II, neither more nor less.

In any event, I would be happy to have you expand your statement on that and get a source for the record, if you could do it within the next week or two.

Mr. REISS. Sure; thank you.

The three-fifths override provision of section 1 of the proposed amendment is a further departure from stated constitutional principles. Majority rule in the principle prescribed by the Constitution for congressional decisionmaking in all but a handful of circumstances. Those circumstances generally involve decisions of great magnitude which pose a tangible threat of inter-branch conflict, including overriding of Presidential veto, convicting a President following an impeachment, and resolving disputes over Presidential disability.

Senator HATCH. Well, I would refer to the filibuster rule, which is a three-fifths rule in the Senate. In other words, you can invoke cloture on an extended debate only after obtaining a three-fifths vote of the Senate.

Mr. REISS. But that is not a constitutional provision.

Senator HATCH. Well, it derives from a constitutional provision.

Mr. REISS. Internally. I take it that neither the Supreme Court nor any other court has ever imposed that rule on the Senate.

Senator HATCH. I do not think the Supreme Court would deign to do that.

Mr. REISS. Precisely.

Even in the circumstances I have just elaborated—and I think this is a further departure that the amendment makes—the super-majority requirement, and I guess the cloture rule that you have just cited is an exception to this, is of those legislators present; it is not of the entire membership of both Houses. None of these super-majority provisions in the Constitution would require that the total number of legislators be totaled up and the percentage of those legislators be required for the super-majority vote.

While the Constitution requires only a simple majority of Congress for a decision so grave as a declaration of war, under the budget-balancing amendment if the government were to be at the spending limit, any new government activity requiring the expenditure of even the smallest sum would require a three-fifths vote of Congress. This is a formula for tyranny by minority which could withhold votes for essential appropriations unless minority demands were met.

Congress and the President already have the power and the authority to balance the budget without the need for a constitutional amendment.

Indeed, it is ironic that Congress, which has the legal power to balance the budget today, is considering an amendment to the Constitution to require itself to balance the budget tomorrow.

If the concern is with spendthrift elected officials—I know we are going to disagree on this, Senator Hatch—the appropriate constitutional remedy is not a change in the constitution, but more self-discipline on the part of those who now have the public trust or the election of more frugal public officials.

Words alone, not even those that are constitutionally enshrined, can substitute for will. I think that what effectively we have is an effort to substitute constitutional words for a lack of political will.

We therefore oppose the passage of Senate Joint Resolution 5. We recognize that in the current political climate it is politically difficult for Senators to oppose a budget-balancing amendment. Nevertheless, we maintain our hope and confidence that Congress will act in the highest political tradition and reject this profoundly unwise and disturbing proposal.

Thank you.

[The prepared statement follows:]

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Testimony Regarding S.J. Res. 5 Before
The Senate Judiciary Subcommittee on the Constitution

I thank the Subcommittee for the opportunity to present testimony with respect to S.J. Res. 5, which proposes an amendment to the United States Constitution requiring a balanced budget and limiting federal spending and tax increases. I appear today on behalf of the Association of the Bar of the City of New York. The Association is an organization of some 13,000 lawyers, principally from New York City, which was founded in 1871 in a spirit of commitment to good government and public service.

This is the third time a representative of the Association has had the privilege of appearing before a Congressional committee to testify about the wisdom of a "Balanced Budget" Amendment to the Constitution. In 1979, the Association, through its Committee on Federal Legislation, reported in depth on the various proposals then pending to amend the Constitution to require a balanced budget and to limit federal spending. *Budget Balancing by Constitutional Amendment*, 34 Rec. A.B. City of N.Y. 428 (1979). In 1982, the Chair of the Association's Committee on Federal Legislation testified before the House Judiciary Committee concerning H.J. Res. 350 and S.J. Res. 58, the predecessors of S.J. Res. 5. I would like a copy of our 1979 report and our 1982 testimony to be made part of the record of these proceedings, together with my testimony that has been submitted in writing. The Association's consistent and strongly held position is that a Constitutional Amendment requiring a balanced budget would be an unwise and unworkable cheapening of the most ~~valued~~ ^{valued} and successful legal charter in the world.

Our belief that it would be unwise to amend the Constitution to require a balanced budget stems not from a judgment concerning the economic wisdom of such a fiscal policy, but rather from our view of the role of the Constitution in our political system and

our belief in the capacity of elected representatives under the Constitution as it exists now to choose whatever economic policies they deem appropriate to the circumstances of their time. Because such legislative latitude is particularly appropriate in the areas of fiscal and economic policy with which S.J. Res. 5 is concerned, we would oppose a "Balanced Budget" amendment even if there were a present consensus on the desirability of a balanced budget. But there is no such consensus--not even a temporary one. As we noted in our 1979 report:

the economic impact of the proposed constitutional amendments is by no means certain. The potential economic effects are hotly disputed by economists and politicians; there is no clear consensus, no common interpretation, no uniform view. This is an area where reasonable people can and do disagree.

If we can not even agree on the desirability of a balanced budget for the country's situation today, can we, in good conscience, impose this requirement on future generations?

I. The Proposed "Balanced Budget" Amendment Denigrates the Constitution

We should not forget, to paraphrase Chief Justice Marshall, that it is a Constitution we are amending. The budget balancing amendment proposed in S.J. Res. 5, or any budget balancing amendment we can think of for that matter, would be a wholly inappropriate addition to the Constitution. History shows that the process of amending the Constitution has been sparingly used, almost always to correct what Madison called "discovered faults" in the original government structure or to protect against infringement of fundamental rights. Of the twenty-six amendments ratified since 1789, twelve protect the rights of individuals (Amendments 1-10 [the Bill of Rights]; 13 [prohibiting slavery]; and 14 [prohibiting state infringement of due process and equal protection]). Five amendments extend the right to vote (Amendments 15 [race]; 19 [sex]; 23 [District of Columbia residents]; 24 [poll tax]; and 26 [eighteen-year olds]). Seven

amendments, and a section of the 14th Amendment, deal with the structure of government (Amendments 11 [judicial power]; 12 [electoral college]; 14 [counting former slaves in apportionment of Houses]; 16 [income tax], 17 [popular election of Senators]; 20 [fixing dates of congressional sessions and presidential inaugurations; presidential succession]; 22 [limiting presidential tenure]; and 25 [presidential disability and succession]).

The only exceptions to this pattern are the Eighteenth and Twenty-first Amendments, imposing and then repealing prohibition. The proposed budget amendment is more like the prohibition amendments than any other. Like the prohibition amendments, the proposed budget amendment neither states fundamental principles to which we firmly and irrevocably commit ourselves as a nation, nor corrects errors in the constitutional structure of government or safeguards individual rights. Like the prohibition amendments, the proposed budget balancing amendment reflects much less basic and more transitory concerns which, however popular they might be now, do not warrant elevation to constitutional status. The issues raised by the budget balancing amendment are best left to the political arena. The Constitution should not be used as a fig leaf to cover present political embarrassment over the size of the federal deficit.

II. The Proposed "Balanced Budget" Amendment May Result in a Radical Departure From Present Constitutional Norms

A. The Proposed Amendment May Alter the Allocation of Powers Among the Three Branches of Government

Under our present constitutional structure, the budgetary process is the responsibility of Congress and the President--not the judiciary. The proposed budget balancing amendment seems very likely to change that. According to the Report of the Senate Judiciary Committee on S.J. Res. 58, the predecessor to S.J. Res. 5, not only is judicial review of the budgetary process not prohibited, but it is relied upon as a check on "the most serious and unambiguous violations." S.Rep. No. 97-151 at 65-

66. Judicial enforcement of the proposed amendment seems destined to give rise to an annually recurring crop of lawsuits challenging particular expenditures and appropriations and every attempt to raise or lower taxes.

Given the vagaries of the "standing" and "political question" doctrines, those principles can hardly be counted on as a bulwark against such lawsuits and their attendant judicial involvement in the budgetary process. With respect to standing, there is a substantial possibility that any taxpayer would have standing to challenge expenditures, appropriations or congressional definitions such as "national income" claimed to be in violation of the amendment. In the leading case of Elast v. Cohen, 392 U.S. 83 (1968), the Supreme Court allowed taxpayers standing to challenge the expenditure of federal funds to assist religious schools. The Court stated that taxpayer standing should exist where the taxpayer establishes (1) a logical link between his status as a taxpayer and the type of legislative enactment attacked and (2) a link between that status and the precise nature of the constitutional infringement alleged. In Elast, the Supreme Court found that test was met because (1) the plaintiff was challenging an appropriation under the spending power rather than an incidental expenditure in the administration of a regulatory statute, and (2) the constitutional infringement alleged was that the appropriation exceeded a specific constitutional limitation on the exercise of congressional spending power--the Establishment Clause of the First Amendment.

Although the Supreme Court has not yet extended Elast to cases not arising under the Establishment Clause, a strong argument can be made that Elast supports a taxpayer's standing to challenge appropriations or expenditures under a budget balancing amendment. The budget balancing amendment would be, even more clearly than the Establishment Clause, a specific constitutional limitation directed at the congressional spending power; and the Elast court specifically said that a taxpayer would have a "clear

stake as a taxpayer" in assuring that any such constitutional limitation is not breached.

Even if Flast is not extended to cases under the new amendment, or if cases should arise to which the Flast doctrine is held inapplicable, it is possible that standing will be upheld in particular cases under the rationale of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970). In Data Processing, the Court held that a plaintiff challenging governmental action may establish his standing by showing that (1) the challenged action has caused him injury--economic or otherwise--in fact, and (2) the interest he seeks to protect is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Subsequent Supreme Court cases have applied the Data Processing test with varying strictness, so it is difficult to predict how Data Processing would be applied in a challenge to a particular action as a violation of a budget balancing amendment. However, there is a likelihood that in some portion of the cases the courts will find that plaintiffs have standing on account of the injuries they sustained and the relationship between the interests sought to be protected by the plaintiff and the interests protected by the budget-balancing amendment.

Like the doctrine of standing, the "political question" doctrine also cannot be relied upon to insulate the judiciary from the budgetary process. The political question doctrine holds that certain questions arising under the Constitution are to be determined solely by the "political" branches of government--the Congress and the President--and not by the courts. The contours of the political question doctrine, however, are quite unclear. Several issues that many would have supposed to be "political" questions--for example, the apportionment of state legislatures and the House of Representatives' refusal to seat one of its own members--have been found by the Supreme Court not to be. Given that at least

~~some~~ judicial review is envisioned under the proposed amendment, we seriously doubt that all questions arising under the proposed budget balancing amendment would be held to be political.

Our courts are ill-equipped to handle these fiscal and budgetary matters, which are now generally excluded from their jurisdiction. More important, judicial involvement in the budgetary process would alter, for the worse in our view, the present system of checks and balances among the three branches of government. It would add a new and undesirable element of uncertainty to the entire process.

Restricting the ability of the courts to enforce the proposed amendment is, however, no answer. The greater the extent to which the courts are barred from enforcing the proposed amendment, whether by the standing and political question doctrines or by other means, the greater is the ability of Congress and the President to ignore the dictates of the amendment. The elimination of judicial involvement in the enforcement of the amendment would thus have the ironic result of removing the major benefit being proffered for passing the amendment in the first place: the creation of a constraint outside the legislative process against passing an unbalanced budget.

B. The Proposed Budget-Balancing Amendment Contains an Unprecedented Supermajority Requirement

The "three-fifths override" provision of section 1 of the proposed amendment is an unwarranted departure from the principle of majority rule. Majority rule is the principle prescribed by the Constitution for congressional decision-making in all but a handful of circumstances. Those circumstances generally involve decisions of great magnitude which pose a tangible threat of inter-branch conflict, including overriding a Presidential veto (Art. I, sec. 7); convicting a President following an impeachment (Art. I, sec. 3); and resolving disputes over Presidential disability (Twenty-Fifth Amendment). Even in these

circumstances, the super-majority required by the Constitution is of those legislators present, not of the whole membership of the Congress.

While the Constitution requires only a simple majority of Congress for a decision so grave as a declaration of war, under the budget balancing amendment, if the government were already spending to the constitutional limit, any new government activity requiring expenditure of the smallest sum would require a three-fifths vote of the Congress. This is a formula for tyranny by a minority, which could withhold votes for essential appropriations unless unrelated minority demands were met.

III. The Proposed Amendment is a Sham that Does Not Accomplish Its Asserted Aims

A. The Amendment Does Not Require that the Budget Actually Be Balanced

Putting the larger constitutional objections aside and evaluating the proposed amendment on its own terms, S.J. Res. 5 suffers from a serious defect: It will not prevent Congress and the President from deficit spending. All that section 1 requires is that ~~actual~~ "outlays" not exceed the outlays projected in the "statement of receipts and outlays" adopted by Congress prior to the fiscal year, and that these projected outlays not exceed the projected receipts in that statement--unless Congress specifically authorizes otherwise by a three-fifths vote. The Senate Report on S.J. Res. 58, section 1 of which was worded precisely the same as section 1 of S.J. Res. 5, explains that the statement of projected receipts and outlays is merely Congress' best estimate of what the federal government will collect and spend in the coming year. There is no requirement that the estimated outlays and receipts be adjusted during the year to conform to actual figures. Revenue estimates are inherently unreliable. Estimators vary widely in their opinions. Even a sound estimate cannot be accurate because actual revenues are quite sensitive to changes in the economy. Thus, even given the best of Congressional intentions, the proposed amendment cannot

realistically be expected to curb spending in excess of actual revenues. Given less than the best of intentions, it is obvious that Congress could effectively authorize deficit spending by adopting whatever estimate of receipts would allow the desired level of outlays.

B. The Amendment Will Not Limit the Rate of Tax Increases

The proposed amendment also seeks to prevent federal tax revenues from increasing faster than the growth in "national income." This is the objective sought by section 2. But neither that section nor any other defines the term "national income." Indeed, the Senate Report on S.J. Res. 58, section 2 of which is identical to section 2 of S.J. Res 5, states that Congress can choose a definition of "national income" from a host of measures--gross national product, net national product, national income, personal income, disposable personal income and gross domestic product. S. Rep. No. 97-151 at 49. There is, moreover, no requirement that the measure of "national income" Congress chooses be consistent from year to year. These various possible measures of "national income" will yield different figures for the same year. In 1970, for example, national income rose by 4% while personal income rose by 7.5%; and in 1974 national income rose by 6.9% while personal income rose by 9.7%. Consequently, Congress can meet the dictates of section 2 by adopting the definition of "national income" most convenient for that year's fiscal and taxing policies. Even if Congress were not inclined to juggle the definition of "national income," whatever substance the constitutional limitation on the growth of federal tax revenues might have is negated by the provision that, in any event, a majority of both Houses can vote to ignore this limitation.

IV. Conclusion

The proponents of the proposed budget balancing amendment argue that the amendment's main benefit will be to overcome the "structural bias toward higher spending" that now exists in the

federal government, and stress that the amendment will make Congressional spending and taxing more visible. They assert that Congress now "has every political incentive to spend money" (to satisfy the demands of those interested in specific programs) "and almost no incentive to forego such spending" (to reduce deficits which affect the citizenry at large). S.Rep. No. 97-151 at 4, 6. The amendment will achieve this objective, its supporters urge, by re-establishing the "traditional linkage between spending and taxing" and by requiring Congress "to cast a politically difficult vote" to increase taxes or reduce spending "under conditions of maximum political visibility." *Id.* at 8, 74.

It may well be that to increase the political visibility of congressional voting records--and therefore the political vulnerability of members of Congress--is a worthwhile objective. It is doubtful, however, that the means being proposed in this amendment will achieve that end; and it is undeniable that resort to these means is an excessive response to a problem that Congress and the President can address directly right now.

Congress and the President already have the full constitutional authority to balance the budget without the need for a constitutional amendment. Indeed, it is ironic that Congress, which has the legal power to balance the budget today, is considering an amendment to the Constitution to require itself to balance the budget tomorrow. If the concern is with spendthrift elected officials, the appropriate constitutional remedy is not a change in the Constitution, but more self-discipline on the part of those who now have the public trust, or the election of more frugal public officers. Words alone--even those that are constitutionally framed--cannot substitute for will.

We therefore oppose the passage of S.J. Res. 5. We recognize that, in the present political climate, it is politically difficult for Senators to oppose this budget

balancing amendment. Nevertheless, we maintain our hope and confidence that Congress will act in the highest political tradition and reject this profoundly unwise and distracting proposal.

Thank you.

Dated: March 6, 1984

**SUPPLEMENTARY TESTIMONY OF PROFESSOR STEVEN A. REISS
ON BEHALF OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK**

before the Subcommittee on the Constitution,
Senate Committee on the Judiciary

ON S.J. RES. 5

**S.J. Res. 5 May Resurrect the Impoundment Power Asserted by
Several Past Presidents**

Section 1 of S.J. Res. 5 provides: "The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in [the statement of receipts and outlays adopted for the fiscal year]." Although the sponsors of S.J. Res. 5 and its predecessor, S.J. Res. 58, have expressed their intention and belief that "[t]his provision * * * does not invest in the President any new authority to impound appropriated funds," S.Rep. 97-151 at 61 (July 10, 1981), the proposed amendment could be interpreted to have precisely that effect.

On its face, this constitutional command would seem to override any merely statutory limit on executive impoundment authority, such as that imposed by the 1974 Impoundment Act, 2 U.S.C. secs. 681-688 (formerly 31 U.S.C. secs. 1400 et seq.). If the President concludes that only impoundment can meet his duties under the proposed amendment, then such an act--involving a refusal to spend appropriated funds on whichever programs the President chooses to designate as the causes of excessive total outlays--could well be deemed authorized by the proposed amendment.

This reading of the proposed amendment is plausible not only because of the wording of section 1 of S.J. Res. 5, but also because the President's ability to impound funds under Article II of the Constitution is presently unclear. Although the lower federal courts have, in the main, resolved impoundment cases against the Executive, the Supreme Court has decided only one case on the issue, Train v. New York, 420 U.S. 35 (1975).^{1/}

In Train, the Court ruled that the Federal Water Pollution Control Act, which authorized the appropriation of specified amounts in specified years and required that those amounts "shall be allotted" by a certain date, left no discretion in the Executive to withhold any of the funds. The statute at issue in Train had been vetoed by the President, but passed by a prompt Congressional override of that veto. It was against this legislative background that the Court concluded (420 U.S. at 45-46):

"As conceived and passed in both Houses, the legislation was intended to provide a firm commitment of substantial sums within a relatively limited period of time in an effort to achieve an early solution of what was deemed an urgent problem. We cannot believe that Congress * * * scuttled the entire effort by providing the Executive with the seemingly limitless power to withhold funds from allotment and obligation."

As the above passage indicates, Train was a decision based on statutory interpretation, not on the Constitution and the President's powers under Article II. Indeed, to the extent that

^{1/} See e.g., State Highway Commission v. Volpe, 479 F.2d 1099 (8th Cir. 1973); Louisiana ex rel. Guste v. Brinegar, 388 F.Supp. 1319 (D.D.C. 1975); Guadamuz v. Ash, 368 F.Supp. 1233 (D.D.C. 1973); Community Action Programs v. Ash, 365 F.Supp. 1355 (D.N.J. 1973); American Federation of Government Employees v. Phillips, 358 F.Supp. 60 (D.D.C. 1973). But see Brown v. Ruckelshaus, 364 F.Supp. 258 (C.D. Cal. 1973) (upholding Executive's discretion not to allot entire amount authorized under Water Pollution Control Act); Housing Authority v. HUD, 340 F.Supp. 654 (N.D. Cal. 1972) (dismissing suit seeking release of impounded urban renewal funds).

Train indicates anything about the Supreme Court's views on the President's impoundment power under Article II, it is that if Congress wants to limit the President's ability to impound funds allotted to approved programs, it must do so clearly and unambiguously. Given the latitude in spending that section 1 of S.J. Res. 5 envisions at least on the part of Congress, if not also on the part of the President, it is unlikely that Congress would enact many bills that would clearly require the expenditure of a definite amount by a definite date; for to do so would restrict Congress' own flexibility to exercise its responsibility under section 1 of the proposed amendment to "ensure that actual outlays do not exceed the outlays set forth in [the mandated statement of outlays and receipts]."

In sum, S.J. Res. 5 may well result in the resurrection of Presidential impoundment in two ways. First, the proposed amendment could be read, despite Senate protestations to the contrary, as a new source of such Executive authority. Second, the responsibility the proposed amendment imposes on Congress to ensure that actual outlays do not exceed those set forth in the "statement of receipts and outlays" would encourage appropriations flexibility rather than rigidity, and militate against the passage of the kind of specific, expressly mandated, non-discretionary expenditures that may be needed to deny the President the power of impoundment.

Senator HATCH. Thank you, Mr. Reiss.
Mr. Davidson.

STATEMENT OF JAMES DAVIDSON

Mr. DAVIDSON. Thank you very much, Senator Hatch. I appreciate the opportunity to be with you and to give the views of the National Taxpayers Union, which has at this point 130,000 honest-to-God, live, pulse-beating members who pay dues in all 50 States.

Since 1975, we have been working to try to get such an amendment passed by the Congress, or in the alternative if the Congress deigns not to pass it, we have been seeking a constitutional convention where we believe delegates selected by the people would be willing to pass such or like amendment.

I am pleased to say that as of today, we have 32 of the required 34 State legislatures which have acted, and I believe that the conditions are favorable for the enactment of constitutional convention calls in at least two more States in the foreseeable future.

So I believe that the question that really is before the committee and the Congress is not whether we will have a reform of Federal finances and budgeting procedures on a constitutional basis, but whether this reform will be drafted by the Congress or by a convention.

I understand that there are many people who have different views on this question, but I think it is quite clear that the public overwhelmingly and for a very long period of time has indicated its belief that there is a defect in the budgetary process.

The Roper Organization went back into the archives as far back as they could find scientific polls on the question of the budget balance, and they found that this was the one most stable and firm opinions in the constellation of American views A, that the budget should be balanced, and B, that the Congress was unlikely to do so.

I think in this respect the ordinary citizen who wrestles everyday with the problem of making his ends meet has a good deal more insight into the difficulties that the Congress faces than do many experts who will be able to see all sorts of particulars but cannot address the dynamics involved.

I think that if we wanted to look at this process from a very subtle perspective, from the perspective of incentives, we would come to the understanding of why the budget is not in balance. I think Lew Uhler has given some insight into this.

I would just add that we have analogy here with something that Garrett Hardin called "the tragedy of the commons." He pointed out that you can very easily have a situation where it is rational for individuals to take actions which make them all collectively worse off, and to call on them to have the will power or good intentions to solve this problem is the fundamentally mistaken nature of the problem.

Just as in New England in the early days of our country when we had common fields farmers were tempted, and rationally so, to overgraze those fields, so today special interest groups working through Congressmen as their brokers are tempted to overgraze in the common till.

It would not have made sense for one or two farmers to take off the common in New England 1 of their cows in a circumstance where, say, 100 cows on a field would produce less milk and less meat than 50 cows would have done if the thing had been properly managed. The obvious thing would have been for someone to take some of those cows off the field, but whose cows do you take off? No one individually would volunteer to take off his cow because he would be far worse off by having done so and would have achieved very little in the way of the public good.

The same kind of problem confronted fishermen in the North Atlantic in recent years when they discovered that some new technology perfected by the Japanese enabled trawlers to scoop deeper into the ocean to collect more fish.

The rational fisher captain at that point went out and bought this equipment at great cost, even though the ultimate result which many of them did foresee was that within a few years they were catching less fish than they had in the first place.

If they had been able to enforce an agreement upon all fishermen not to fish so deeply into the seas, they would have all been better off in the long run and saved this great expenditure.

What we have today is a situation where special interests are scooping too deeply into the national till and we would all be better off as individuals and members of these groups which benefit one after another from this type of prospecting if we could enforce upon every one of us an agreement not to dig too deeply into the purse.

I think that this is the kind of problem that is sometimes difficult to understand. It does not strike one directly when it is seen from a distance, but just as it would be idiotic to say people have the power to end pollution, therefore we do not need pollution controls, it is equally, I believe, wide of the mark to say that we do not need budgetary reform simply because the Congress has the power to balance the budget.

The question is not what the people have the power to do, but what they have the incentive to do and what they are likely to do under the given circumstances. If you took all the people in this room and gave us all a devil's agreement and an American Express gold card and said to us, "Here you have a gold card; you have the power to spend any amount of money, unlimited amount. However, there is this provision: at the end of this month, each of us must pay one-four hundred thirty-fifth of the amount of the total bill, however much we personally have spent"—we would be inclined, if we knew what we were doing, to rush out and spend as fast as possible—in essence, to spend like Congressmen—even if we knew that bankruptcy was the result in the end.

The only way around that kind of problem is not to say to people, "please be responsible"; it is to put a limit on the amount that can be charged, put a limit on that card. That is what a balanced budget requirement would do.

There is no doubt that attempts would be made to deflect costs onto the private sector. Perhaps someone will propose that 6 months' notice would be required to fire somebody. But individuals to whom this cost would then be imputed—highly organized lobbies and very capable lobbies would be in a far better position to resist

these costs than are the undifferentiated members of the public who today pay for the budget deficit in ways which very few people, can completely understand.

So the problem is not that there will be some deflection of cost, which there will be, but that there will be lower social costs in the aggregate from the temptation to reward special groups at the expense of others than is the circumstance in today's arrangements.

Now, we have heard the suggestion that if you have a three-fifths limit or a two-thirds limit or some other limit that you are going to then get higher spending, which I think one does not need to think about very long to realize is incorrect.

The fundamental position that economists hold to, if they hold to nothing else, is that when you raise the cost of something you get less of it. If you raise the cost of getting deficit spending, you will have less deficit spending.

I think that there are other kinds of questions which we need to think about. Certainly, the good professor here has raised some questions. Carol Cox has raised good questions, and others have done so as well.

But if you look at the operation of budget-balancing requirements at the State level, you see quite clearly that these are non-problems. The supreme courts of many, many States are not involved in the day-to-day operation or design of budgets of those States.

Practically every State has a budget-balancing requirement. Some of these are pretty feeble; some of them are very strong. The stronger they are, the better they work is the generalization that one could make. Practically every locality in the country has such a requirement; practically every school district and municipality has such a requirement.

This does not mean that local judges and magistrates run the budgets of these localities. This, too, is a nonissue, it seems to me.

There is an experience of other countries which have at the Federal level what amount to budget-balancing requirements. The Swiss Government has the strongest in the world, and I believe that it is no coincidence that the Swiss economy is also the strongest in the world.

If we could do nothing along the lines that are proposed in Senate Joint Resolution 5, I would like to adopt the Swiss view of these things, and I can assure you that we would have sound fiscal policy, especially if we would allow the public to vote in referendum on the question of whether they wanted the deficit to increase or to have a budget out of balance or to raise taxes along the lines that might be required to close a gap created by overspending.

Now, we have heard the great father of the Constitution, James Madison, quoted as stating that discovered faults ought to be the basis of things which we correct. He did speak of both the Congress and the States having the ability to correct faults as they became obvious.

It so happens that at the State level where almost every State has a budget-balancing requirement that this was not an original feature of those constitutions. But, in fact, most of these requirements were put into place after painful experience in the 1830's and 1840's for those States that were then in existence where prac-

tically every one of these States went bankrupt due to profligate spending. It was discovered that the only way to restrain the legislature from spending and indebting the State too far was by such a requirement.

Those who are interested in reading footnotes can discover that there is still today in London a committee, who owns the bonds that Mississippi defaulted on in the middle of the last century. This committee is still at work trying to collect money on these defaulted bonds which the State of Mississippi has yet refused to pay.

Balanced budget provisions were established in constitutions for a reason, because there is a fundamental defect, one which has been long recognized, though, perhaps, in the beginning, only people of great vision could see it.

Jefferson was the first person who proposed a balanced budget requirement. He wrote from Paris to Madison at the time the Constitution was being drafted and asked, urged and pleaded that this be incorporated. As he put it very eloquently, the Earth belongs to the living and it is wrong, as he put it then, and I believe it still is wrong, for us, the living, to pass on to future generations the costs that we are unable or unwilling to bear ourselves.

It has been pointed out that the law, in its humanity, will prohibit a father from passing on debts to his children or grandchildren which he does not have the assets to require upon his death.

If I were to go wild, spending money that I did not have, and were to die with assets which were insufficient to cover those debts, I would not expect, nor would the courts expect, my children or grandchildren, if I had any, to pay these debts.

However, as a collective entity, as a society, the generations which today are benefiting from Government spending are saying, in effect, we are going to require that those who come after us pay those bills which we were unwilling to pay for benefits which we have consumed today.

I think that that is wrong in a profound moral sense, quite apart from any of the economics of the situation. But I think that there is also a problem on an economic level which many people have failed to understand which involves a cumulative effect of years and years of deficits and irresponsibility which are beginning to show their toll in the financial markets of this country and throughout the world.

One of the things which we have seen in many, many countries which have attempted to spend money they did not have is that, in time, there is a deterioration, which can be likened to what happens when you smoke packs of cigarettes day after day.

If you reach the age of 50 and look back and say, "I smoked two packs of cigarettes when I was 20 years old and nothing happened to me and today at 50 I am only smoking a pack and a half, therefore I can relax," you are fundamentally fooling yourself, as indeed are those people who say that we do not need to worry about the deficit because today it is a smaller fraction of the GNP than it was in 1945 or some like comparison.

The reason I say this is because if we look into the capital markets, we can see an alarming phenomenon which is repeating itself in this country just as surely as it did in Argentina, Bolivia,

Mexico, Israel, and other countries which have gone to the extreme of deficit spending.

What happened in those countries and what is happening here is, that first of all, there is a shortening of the maturities of Government debt. As this shortening takes place, you eventually reach a stage where the Government bonds and the bills conflate into a single entity, which is to say that you can no longer float long-term debt.

If you look over the last 50 years, not to mention the last 40 years, the tremendous foreshortening of the maturity of Government debt points in a trajectory to a total collapse of the bond market if things continue as they are by the end of this decade.

Now, I am not saying that that is going to happen, but it ought to sober anybody who cares about the future of this country and who cares about the legacy that we will leave to our children, not to mention the legacy that we will have for ourselves in a few years' time.

If you look at a country like Israel, which is, in my opinion, totally at the brink of ruin because of this policy, you have a situation which we could not really overlook. People have seen the example of Argentina; they have seen the example of Mexico and other countries that went broke, spending money they did not have.

The tendency has been to think, well, these people are a little bit emotional, perhaps, or they have some other defect which prohibits them from running sound policy. Even though it is not wise to say so in some respects, most Americans do not feel that the experience of Latin America is at all relevant to us because we have seen over the years that they have had many, many forms of misgovernment which we seem to be immune to.

But Israel is a nation which has the best, most able economists that money can buy; there is no shortage of talent in that country. Yet, they have gotten themselves into a position where inflation is at triple-digit levels. The amount of money that they are paying on their debt, presently is one and a half times the size of their defense budget. Nobody there, from the cleverest to the dullest, can see any way that they can get out of that situation.

And I say that for those of us who would rather solve a problem before it becomes intractable. The evidence is clear. If we will open our eyes and see around the world, we cannot follow the same policies that have led other countries to ruin without having ruin ourselves.

We borrowed last year \$275 billion, which is more than the entire gross national product of China, the largest country in the world. We are spending money at a rate which is so gigantic that if we compare it to other countries, it is incredible how much money we are spending.

There are only about 10 countries in the world whose gross national product is as large as the amount of money we are spending this year to pay interest on the overdue bills from past years' deficits. This is money that is being extracted from the economy now that does not pay for \$1 worth of social service, does not educate one child, does not provide one tiny bit of national defense, or any other thing. It is simply money that we are paying as evidence of the fact that we cannot come to grips with our financial situation.

I believe, just as Jefferson believed, that there are problems which require constitutional restraint. I think every one of us in this room is glad today that we do not have to depend upon the tender mercies of the Congress to protect us in our first amendment privileges.

By the way, anybody here who has any insight into politics or economics could think of lots of ways that a government intent upon violating the first amendment could do so. If one were so minded, he could pass a law establishing price controls on newsprint that placed those controls at a level below the cost of production. He could then allocate the scarce supplies only to those publishers whose views were acceptable to the people making allocation.

That is possible. Anyone can see that it is true, but it does not mean that the first amendment is useless any more than a balanced budget requirement would be, because clever people could think of ways where it might be circumvented in a hypothetical situation. It, too, like the Bill of Rights, would protect us from the tender mercies of legislatures which have proven time and again—23 times in the last 24—that they are not up to the task of maintaining fiscal responsibility.

So, as Jefferson said long ago, and it is still true today, I would urge you to pass this constitutional amendment—late is better than never—on the grounds that we should hear no more of faith in man, but bind him down from mischief with the chains of the Constitution.

Senator HATCH. Thank you, Mr. Davidson.

Senator GRASSLEY.

Senator GRASSLEY. Mr. Chairman, I am going to submit a statement for the record.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman: I want to commend you for conducting this hearing on the balanced budget amendments, S.J. Res. 5 and S.J. Res. 22. As a co-sponsor of S.J. Res. 5, I welcome this opportunity to build a record of the intent of Congress on this proposed amendment.

This amendment is necessary because the Congress has shown itself unable to muster the discipline needed to bring the federal budget into balance on its own volition. Whether you believe that the massive deficits we see today and over the next several years are the result of government spending too much money or not taxing enough, the fact remains that the federal government of the United States has not had a balanced budget since 1968. The 1968 balanced budget was one of fewer than a half dozen balanced budgets since the 1930's.

The situation we face today is grave, and calls for drastic action. The states see this and 32 of them have called for a constitutional convention for this purpose. The people realize it and overwhelmingly favor a balanced federal budget. The President of the United States realizes this and has endorsed our efforts. It seems that only the Congress itself fails to see the dangers we face by continuing our current path, and it is the lack of discipline by Congress that makes this amendment necessary.

Again, I thank you, Mr. Chairman, for convening this hearing and I look forward to a mark up of S.J. Res. 5.

Senator GRASSLEY. Mr. Chairman, I urge you to push for this legislation just as hard as you can because I surely hope that we can get it through the Senate this year as we did 2 years ago. I hope that that is the timeframe.

Senator HATCH. Well, thank you very much.

Let me throw a question out to all of you. Proponents of this amendment generally argue that a constitutional amendment is necessary to alter the institutional biases that exist within our system of government in favor of ever-increasing levels of spending.

Let me just ask you this question: Do you flatly disagree with this observation or do you feel that there are alternative ways of correcting these biases?

Ms. Cox. Well, you know, Mr. Chairman, that we think it is unfortunate, but nonetheless true, that a balanced budget constitutional amendment is simple, it is understandable, it is popular, and we are convinced that there are a number of seemingly technical, maybe complicated, maybe even arcane changes which, if they were made, would make a substantial difference in the biases in the system and might drive that system toward budget balance.

Senator HATCH. You agree there are biases, then?

Ms. Cox. I do agree there are biases in it.

The irony, it seems to me, Senator Hatch, is that you are persuaded that Congress will amend the Constitution to achieve this objective, but in the absence of a constitutional amendment Congress would not agree to procedural changes to accomplish the same goal.

I cannot accept the proposition that constitutional change is a necessary precondition to fiscal sanity in this Nation. I cannot accept that a Congress that is prepared to amend the Constitution in order to move the budget toward balance, in the absence of a constitutional amendment, would be, as you say, unprepared to do the other things it might do that could ensure that outcome.

Senator HATCH. The word may not be "unprepared", but more like "unable."

Let us go across the table.

Mr. UHLER. I am fearful, Mr. Chairman, that the effort to solve the current malaise and dysfunction of the budgetary process by simply changing Budget Act procedures is much like rearranging the chairs on the deck of the *Titanic*. We must recognize that we are confronted with floating ice and had better chart a new course. The Founding Fathers fashioned limitations on the power of those whom we elect. We have discovered error in not having, in the first instance, a requirement for fiscal restraint, and having tried all other means, it is now abundantly clear that only constitutional rearrangement is going to get the job done.

We can liken this to first amendment rights, privileges and constraints. The first amendment says that the Congress will not intermeddle in certain areas of human action—speech, religion, et cetera—which we deem so sensitive as to be off limits those we entrust to make decisions in legislative bodies.

All we are saying by this amendment, by a formula amendment, is that beyond a certain, described, predictable share of the resources of this Nation—unless you, the Members of the Congress, otherwise reach a supermajority consensus—then beyond that amount of money, "keep off the grass."

That is what this whole business is all about. It is not only proper, it is absolutely demanded of us by the framers of the Constitution, that we adopt this restraint.

In terms of the American people every poll reveals what the people want. One taken recently of registered Democrats only shows that 66 percent want a balanced budget constitutional amendment.

This is the most bipartisan support base for an action on the part of the Congress that one could possibly ask for. What I have found in working in the Capitol over the last 5 or 6 years is that many Members of the House and the Senate who originally said, "Look, we have this budget process and we must discipline ourselves," have finally acknowledged that this constitutional tool is exactly what the doctor ordered to enable you to do your job properly.

Senator HATCH. Thank you. Mr. Reiss?

Mr. REISS. Senator Hatch, it may well be true that there is overwhelming sentiment for this amendment now, but I think Anatole France once said if 50 million people say a silly thing, it is still a silly thing.

But your question, I think, is one I understand to be of tremendous concern: how else to do this. I am not familiar enough with the internal procedures of the House or the Senate to suggest internal mechanisms by which this could be done, although as you yourself point out, there are internal rules, such as cloture, which do require super majorities, which are imposed more or less internally.

Part of the problem with identifying a solution to this supposed institutional bias toward deficit spending is that no one has really pinpointed with any specificity precisely where this institutional bias comes from.

If it is coming from interest groups who wield a disproportionate say in the electorate because they donate a disproportionate amount of money in political campaigns, then certainly one possible solution is the public financing of congressional elections. In fact, I must say the Association of the Bar of New York is in the process of writing a report on various campaign financing bills and is currently considering the wisdom of public financing of congressional campaigns.

Certainly, if the bias in the process is coming from interest groups having a disproportionate effect so that Congressmen and Senators are pressured to vote for measures that help these groups, but not pressured to vote for measures that would help everybody—namely, reducing the deficit, that would certainly be one mechanism. So I think there are at least two.

I hesitate to suggest a third mechanism which I think was suggested by Phil Kirland, who is a constitutional law scholar at Chicago, which was simply to pass a criminal statute that makes it a felony to vote for an unbalanced budget. I suspect that would not receive much applause in the Congress.

Senator HATCH. Let me just read to you what Arthur Burns said, the former chairman of the Federal Reserve Board, who happens to be in town this morning. I was in a breakfast meeting with him.

He said:

Approximate causes of this governmental bias are quite clear. In general, spending programs are more popular with people than higher taxes. The potential beneficiaries of a spending program are often a numerical minority, but they have a

stronger incentive to keep informed, to organize and to lobby for their favorite program than those who bear the costs have to oppose it.

The rising costs of political campaigns and the concurrent proliferation of fund-raising committees put intense pressure on legislators to vote for spending programs favored by such groups. We may, in fact, be entering an era in which governmental processes are overwhelmed by the naked demands of increasingly well-organized and effective interest groups.

It is this concern that has led me to look with favor on even preemptory devices for offsetting the existing bias toward larger Federal spending and borrowing.

I believe it might be interesting for you, Mr. Reiss, to read our report on this amendment that we put out back in 1981 because I think it covers, in addition to his statement, the biases that presently exist.

I believe everybody there would have to agree that if we could resolve the economic dilemmas and problems of this country without amending the Constitution, and turn around 50 years of deficit spending that would be preferable. I believe in the last 52 years, there may have been 6 years where we have balanced the budget, which means 46 years where we have not.

We have tried various forms, even Ms. Cox' approach of trying to amend the rules so we are institutionally more compelled to reach a balanced budget by giving a point of order. This works to a degree, but to a relatively minor degree, in my opinion, in the budget process.

The fact is that Congress is not going to do that. Again, Ms. Cox' comment that we should do it now is all well and good, but we have had 52 years of not doing anything immediately. Had we passed this balanced budget amendment in 1982, we would already be 2 years into the 4 to 5 years it would take to ratify it and become effective. So we would only be 2 years away and would have a tremendous lever on the part of any fiscal conservative, or anybody who wants to get spending under control, already operating and functioning in that respect.

Let me get you a copy of that report and have you read it. I would be interested in your written remarks, if you would care to add any more.

Mr. REISS. I guess my only problem with all of this is that to the extent there is a feeling that the inability to balance the budget is a lack of political will and responsiveness to various interest groups, I really do not see how this amendment changes anything.

There are so many ways to get around the need to balance the budget through this amendment that it can end up being useless in a whole host of ways.

Senator HATCH. The way it worked is it allows Members of Congress to point to an external constraint to which they have to comply, where now they do not have that. They just have to say to that special interest group, "Well, gee, I just cannot vote for that because although it is good, it is going to unbalance our budget." That does not fly.

But if they say, "Hey, look, the Constitution is going to require me to have to choose between competing good interests. Unfortunately, I cannot choose all of them, so I have to do the best I can."

It really does give Members of Congress an excuse; it gives them a pressure; it gives them incentives, as Mr. Davidson has said, to do

something about this. That is one of the things that gives it some allure.

Mr. Davidson, what is your feeling about this?

Mr. DAVIDSON. Well, I have some very elaborate thoughts about why this bias exists which I would be glad to share with anybody who doubts it is real. In my written remarks, which I hope will be included in the record, I have some additional comments on this bias.

Senator HATCH. Without objection, it will be included.

[The following was received for the record:]

PREPARED STATEMENT OF JAMES D. DAVIDSON

Mr. Chairman and members of the Committee, thank you for the opportunity to appear today on behalf of S.J. Res. 5, the Balanced Budget-Tax Limitation Amendment. I appear representing over 120,000 members who live in all 50 states. Since 1975 we have been working on behalf of a constitutional amendment for fiscal responsibility. Through our efforts, 32 of the required 34 state legislatures have made application to Congress to call a limited constitutional convention for the sole purpose of drafting an amendment requiring that the federal budget be balanced.

We commend the Constitution Subcommittee for its fine work since 1979 to draft and refine an amendment which will balance the federal budget while also limiting taxes and spending. We were pleased by the Senate's adoption of the Balanced Budget Tax-Limitation Amendment August 4, 1982 by a 69-31 vote. The few and minor changes made in the amendment reported by the Committee is proof of the Committee's careful deliberations on this important subject.

We have pursued the convention method as an alternative method of obtaining this amendment. I have complete confidence that, should a convention be called, it would be limited to this topic and would draft a fine proposal. Because action by the Congress is by no means guaranteed, I urge the Committee and Congress to approve S. 119 by Senator Orrin Hatch, or similar legislation, which would set procedures for such a convention.

Before commenting on the need for this constitutional amendment, I would like to bring the Committee up to date on the status of the convention drive. Thirty-two state legislatures have passed resolutions which have been certified by the appropriate state officials. All thirty-two resolutions clearly call for a limited constitutional convention on a balanced federal budget amendment. As of today, the thirty-two state legislatures which have passed these resolutions are:

Alabama	Idaho	Nebraska	Pennsylvania
Alaska	Indiana	Nevada	South Carolina
Arizona	Iowa	New Hampshire	South Dakota
Arkansas	Kansas	New Mexico	Tennessee
Colorado	Louisiana	North Carolina	Texas
Delaware	Maryland	North Dakota	Utah
Florida	Mississippi	Oklahoma	Virginia
Georgia	Missouri	Oregon	Wyoming

California, Illinois, Kentucky and Montana have passed resolutions which ask Congress to propose a balanced budget amendment but do not call for a convention. Some of the states which were once on this list have since called for a convention. Thirty-six states have endorsed the balanced federal budget amendment, and 32 have further called for a limited convention on this subject.

Convention resolutions have passed at least one house in previous legislative sessions in California, Hawaii, Kentucky, Montana, Ohio, Rhode Island, Vermont, Washington, and West Virginia. Although these resolutions must be reintroduced, this reflects the strong interest in the amendment in those states. In all, action has been taken in 42 states, an indication of the issue's strong support.

A June, 1983 Gallup poll on this subject found that "seven out of every ten Americans familiar with the proposal favor a constitutional amendment that would require Congress to balance the federal budget each year."

Other opinion polls also show that an overwhelming majority of citizens from all walks of life, young and old, rich and poor, black and white -- all agree that a constitutional amendment is needed to force the federal government to follow practices of sound finance.

I am confident that we will be able to force action on this amendment within the next 14 or 15 months. Next year, 17 of the 18 states which have not yet endorsed the balanced budget convention call resolution will be in session. I expect resolutions to be introduced in each of these 17 states. At this time I would say our prospects for passage in one of these states is excellent, 50-50 in a second state, and fair in three others. In addition, the National Taxpayers Union and the National Tax Limitation Committee are coordinating an initiative in the state of California which, if approved by the voters, would force the California Legislature to adopt our limited convention call resolution. This initiative, which is patterned after a similar initiative in Ohio, would require the Legislature to adopt the resolution within 20 legislative days after adoption of the initiated statute by the voters. If the resolution were not approved as specified, pay and benefits for each state legislator would be suspended until such time as the resolution was approved. We are circulating over 230,000 petitions among our members and supporters in California. I feel confident that we will qualify this initiative for the ballot early next year.

Similar initiative efforts are already under way, or will soon be underway in Washington, Montana, and perhaps in other states. Thus, even if no state legislature adopts the resolution during its normal legislative session, I believe that the voters will force a sufficient number of state legislatures to act after November's elections.

There is now a widespread concern that the federal government spends too much and that the resulting deficits have become chronic. The budget has been in balance just once in the last 23 fiscal years. Budget deficits are now the norm during good years and bad. Further, as the record clearly indicates, the trend toward ever larger deficits is worsening.

<u>Fiscal Years</u>	<u>Dollars In Billions</u>
1961-1965 inclusive	\$ 23
1966-1970 inclusive	37
1971-1975 inclusive	121
1976-1980 inclusive	315
1981-1985 inclusive	798 (est.)

1976-1980 total includes a transitional quarter deficit of \$14.7 billion between 1976 and 1977. Includes off-budget items.

In fiscal year 1983, the federal government spent \$128.8 billion to pay the interest on the national debt. That's over \$245,000 per minute. That was 45 percent of individual income tax receipts for that year.

Federal spending continues its rapid increase. The 1983 federal budget set new records for the budget deficit and federal spending. Federal spending claimed 25 percent of the Gross National Product, the first time federal spending has ever taken one-quarter of our nation's economy during peacetime. In 1965 federal spending took 18 percent of GNP. Federal spending grew by 583 percent between 1965 and 1983, while the private sector grew by only 380 percent.

To the extent that deficits are financed through borrowing from the public, real rates of interest increase and federal government borrowing "crowds out" the private borrower. Funds that would have been used for capital investment are diverted to support a federal deficit that largely pays for consumption expenditures.

Persistent deficits are also a major cause of inflation. Because the deficits have become persistent, the Federal Reserve often has to accommodate the deficits by expanding the money supply. This is inflation.

Federal deficits and excessive spending at all times are a clear symbol of federal fiscal irresponsibility and help encourage an inflationary psychology and higher interest rates.

How Budgetary Politics Causes Excessive Spending and Deficit Financing

Some people believe that, as long as there are free and open elections, fiscal excess can be controlled. Empirically, the fiscal record demonstrates that electoral constraints are not enough.

The tendency for government spending to take an ever-greater share of national income is common to all countries with representative government. In spite of many promises to the contrary, no leader has succeeded in actually reducing government spending. There is a reason for this uniform failure. It is not a coincidence. A distinct political bias, an institutional defect, in favor of deficit finance and excessive spending is a common failure of representative institutions. This bias is caused by several factors which I shall briefly outline.

1) Pressure Group Politics. Well organized special interest groups make strong demands for programs that benefit them greatly. On the other hand, these demands are weakly opposed because costs are spread over all taxpayers, each of whom stand to lose comparatively little. Add to this the well documented phenomenon of legislative log rolling for reciprocal political benefit, and it's easy to see why pressures for increasing spending usually exceed the opposition that can be brought to bear..

The result is that the total of government spending is higher, even though the majority of voters would oppose the higher total if given a chance.

2) Deficit financing helps magnify this defect. It enables Congress to make the benefits of increased spending immediately evident to special constituencies while disguising the costs in the form of borrowing, reduced economic growth, higher interest rates and inflation which are diffused over large numbers of the rest of society.

Voters are pleased by tax rate reductions; they are displeased by tax rate increases. The simple arithmetic of the process can produce permanent and continuing deficits.

3) Automatic Tax Rate Increases. The political cost of imposing higher taxes to pay for increased spending is reduced because inflation has enabled Congress to raise the real tax burden without explicitly having to vote to do so. Indeed, political benefits can be reaped by tax cuts that don't cut the real tax burden.

4) Each individual congressman faces a "prisoner's dilemma." The prisoner's dilemma describes a situation where pursuit of each person's self-interest can produce an outcome undesirable to all. Individual congressmen bear a far higher political cost for attempting to restrain spending than they do from contributing to spending in excess of revenues. Even if an individual congressman voted against every single appropriation in its entirety, his or her impact on spending would be negligible. But that same congressman would incur the wrath of special constituencies whose pet projects he or she opposed.

5) Individual taxpayers face a similar dilemma. Ideally, all taxpayers should "ask not what their country can do for them." But selfish behavior points the other direction. Once the seemingly inevitable taxes are paid, it is in each citizen's self-interest to consume and lobby for as many "free" government benefits as possible. Self-denial is impossible for over 230 million citizens who have no effective means of communication and have even less reason to expect complete cooperation.

That is why President Reagan and his predecessors have failed to achieve spending reductions through ordinary political process. Mr. Reagan made a gallant effort, but the federal government continues to grow. If he couldn't succeed in cutting outlays, who can? The likely answer is no one can. The job is undoable under our current system. The only way spending growth can ever be controlled is by constitutional amendment.

The proposed amendment, S.J. Res. 5, is well designed to correct these institutional defects.

Section one of the amendment requires Congress to adopt a statement, or budget, before each fiscal year that is in balance. It allows Congress to

amend the budget statement provided that "revised outlays are no greater than revised receipts." Should Congress want to approve an unbalanced budget, a specific dollar amount of deficit spending can only be authorized by a three-fifths vote of the whole number of each house of Congress. In other words, at least 60 senators and 261 representatives would have to vote to approve a deficit. Congress and the president are also directed to ensure that "actual outlays do not exceed the outlays" adopted in the budget.

This section forces a balance between benefits from spending programs and tax costs. It simply requires that government make explicit the costs for promised benefits. It directly addresses one very important source of the bias for excessive spending by limiting congressional access to deficit financing.

Section two of the amendment limits taxes so that they could not increase at a rate faster than the growth of the economy as measured by the "rate of increase in national income." That limit can be exceeded only by a bill directed solely to increasing taxes which is approved by constitutional majority of both houses of Congress and signed by the president. A constitutional majority is the vote of 51 senators and 218 representatives.

Section two of the amendment prohibits government from taking a larger portion of our national income. This provision is well designed to permanently correct the bias caused by the problem of automatic tax increases cited above. By requiring a constitutional majority of members of Congress to go on the record to approve a tax increase, this provision ensures that the same legislators who advance new spending programs will also have to account for their costs.

It's worth noting that sections one and two would require a roll call vote to approve a deficit or an increase in the tax burden. In each case, these votes would have to be taken separately, that is, they could not be combined with another bill. This sharply limits the possibilities for log rolling. It also ensures that citizens will have a clear understanding of their federal legislators' position on the size of the federal budget.

Section three of the amendment allows Congress to waive the provisions of the amendment for any fiscal year during a declared war.

Section four clarifies the terms used in the amendment by defining receipts and outlays in a comprehensive manner. So called off-budget outlays would be prohibited by the amendment.

Section five says that the amendment would go into effect at the beginning of the second fiscal year after its ratification.

Section six requires Congress to enforce and implement the amendment through legislation. Such legislation will be necessary to provide the new budgetary procedures needed to implement the amendment.

The amendment will greatly increase political accountability. Currently, hundreds of votes are taken each year on the floor of each house of Congress to determine the size of the federal budget. Under this amendment, there will normally be only one vote a year on the size of the federal budget. Even if the voting rules are used in section one and two to adopt a deficit or a tax increase, it is unlikely that more than a handful of votes will be taken on the size of the federal budget. This would allow voters to determine exactly how their federal legislators stand concerning the amounts of federal spending, taxes and deficits. Such comparisons are difficult to make with any precision today.

The amendment also indirectly provides for a spending limit. The balanced budget requirement in section one and the limit on taxes in section two combine to limit federal spending. As Nobel prize winning economist Milton Friedman has said, S.J. Res. 5 "is more sophisticated than it appears on the surface. . . . It is an effective measure, in my opinion, to limit government receipts and spending, on the one hand, and to produce a balanced budget on the other."

The voting rules in sections one and two are carefully crafted so as to eliminate any bias for increased spending or taxes. Although I would personally prefer to see a two-thirds vote requirement in each section, I believe the voting rules in S.J. Res. 5 are both a necessary minimum and sufficient to the task. These rules reflect the consensus among proponents of constitutional budgetary reform.

As a constitutional restraint, S.J. Res. 5 addresses both the "pressure group politics" and the "prisoner's dilemma" factors by governing all the

rules for federal spending. It will force the federal government to control spending by setting rules for controlling the amount that can be spent in any fiscal year.

Richard E. Wagner, a leading theorist on the subject, has written, "One valuable service of constitutional constraints is to prevent undesirable outcomes that would emerge from ordinary legislation. Most of the Bill of Rights comes quickly to mind -- protecting unpopular lines of thought and advocacy, which would often be banned by legislative majorities. Yet over time, such legislation would destroy liberty. Constitutional rules are valuable means of escaping prisoner's dilemmas inherent in ordinary legislative processes."

James Buchanan, an author of Democracy in Deficit, the seminal work on constitutional budget restraint, has written, "the argument for an explicit amendment to the written United States Constitution is based on the conviction that . . . the fiscal constraint must be made explicit and that it must be enforceable. The effects of a balanced budget constraint would be both real and symbolic. Elected politicians would be required to make fiscal choices within meaningfully constructed boundaries They would be forced to behave 'responsibly,' as this word is understood by the citizenry, and knowledge of this fact would do much, in its turn, to restore the confidence of citizens in governmental processes."

This constitutional amendment would increase the incentive effects of any tax rate reductions. Citizens would be assured that the reductions would be permanent because the amendment effectively eliminates automatic tax increases. Citizens would also have greater incentive to save for the future because the amendment would ensure that federal spending and taxes would be limited.

Because the amendment would help reduce inflation, reduce interest rates, prohibit automatic tax increases, and increase public confidence in future fiscal policy, prospects for reduced unemployment and renewed long-term economic growth will greatly improve.

During the Senate's debate on the Balanced Budget-Tax Limitation Amendment (S.J. Res. 58) last summer, several amendments were offered. Only two were passed. The first, an amendment of a technical nature, was adopted by a 97-0

vote. This amendment helped define the respective authorities of the president and Congress in section one of the amendment, required Congress to adopt implementing legislation, and broadened the base for computing the growth in national income.

We supported this amendment, as long as it was made clear that Congress could not arbitrarily change the base period for computing national income from year to year. I repeat that caution here, and urge the Committee to make it as clear as possible that Congress could not act in such a manner.

Table 1 shows the importance of preventing such misinterpretation. It assumes the amendment became effective in 1970, the year following the last year we had a balanced federal budget. If Congress misinterprets this provision in a way so as to minimize the restraints in section 2, its constraining effects will be weakened considerably. The table shows calculations for the growth of national income over several base years: one; three; and five. If Congress could choose a different base year period each year by selecting the base period with the greatest growth in national income, it could dramatically reduce the constraining effects of section two. Table 1 also shows computation using a one-year base, which was provided for by the original version in S.J. Res. 58 and which is permitted by S.J. Res. 5. The difference over a ten-year period is substantial. The Senate clearly meant to specify a consistent period when it adopted the amendment. I raise this point simply to show the Committee the importance of preventing any misunderstanding of this provision by future Congresses.

This table does not necessarily reflect what would have happened had the amendment been effective in 1969. National income growth would likely be higher had the amendment been in effect. Congress may also have authorized larger or smaller increases in spending as permitted by the voting rules under the amendment. However, this illustration does clearly show the importance of a consistent rule for section two.

The other amendment adopted was an amendment offered by Senators Bill Armstrong and David Boren to cap the national debt limit. The Armstrong-Boren Amendment, which proposed adding another section to S.J. Res. 58, requires that "the amount of federal public debt limit be permanent, unless three-fifths of the whole House and Senate approve a bill to raise the debt ceiling."

Table 1
Maximum Spending Under The Balanced Budget-Tax Limitation Amendment
(Dollar Amounts in Billions)
(Spending-Fiscal Years, National Income-Calendar Years)

Year	Actual Outlays (\$)	National Income (\$)	1 Yr. Increase Factor	3 Yr. Avg. Increase Factor	5 Yr. Avg. Increase Factor	Largest Increase Factor (1,3,5 Yr.)	Maximum Spending Largest Factor (\$)	Maximum Spending Under 1 Year Factor (\$)
1970	195.7	810.7	7.9%	7.5%	8.2%	8.2%	198.7	198.0
1971	210.2	871.5	4.0%	7.0%	7.2%	7.2%	213.1	206.0
1972	230.7	963.6	7.5%	6.5%	6.8%	7.5%	229.1	221.5
1973	245.7	1086.2	10.6%	7.4%	7.8%	10.6%	253.3	244.9
1974	269.4	1160.7	12.7%	10.3%	8.5%	12.7%	285.5	276.0
1975	332.3	1239.4	6.9%	10.0%	8.3%	10.0%	314.2	295.0
1976	371.8	1379.2	6.8%	8.8%	8.9%	8.9%	342.1	315.0
1977	409.2	1550.5	11.3%	8.3%	9.6%	11.3%	380.7	350.5
1978	458.7	1760.3	12.4%	10.2%	10.0%	12.4%	428.0	394.0
1979	503.5	1966.7	13.5%	12.4%	10.2%	13.5%	485.9	447.3
1980	590.9	2116.6	11.7%	12.6%	11.1%	12.6%	546.9	499.8
1981	678.2	2373.0	7.6%	11.0%	11.3%	11.3%	608.8	537.9
1982	745.7	2450.4	12.1%	10.5%	11.5%	12.1%	682.6	603.0
1983	808.3		3.3%	7.7%	9.7%	9.7%	748.4	622.7

Source: National Taxpayers Union Staff Computations. Basic Data: The Budget of the United States Government Fiscal Year 1984, The Economic Report of the President, 1983.

Note: The amendment's effective date was assumed to be 1970. Receipts were assumed to equal outlays in the base year, 1969. The increase factor is the percentage increase in National Income from the previous year calendar year. Therefore, the 4.0% increase in the 1 Yr. Increase Factor column which appears on the 1971 line corresponds to the increase in National Income in 1970.

Senator Armstrong said during the debate that his intention was to add "sharks teeth" to the Balanced Budget-Tax Limitation Amendment. He said he wanted "a definite point of reference" such as the national debt ceiling written into the amendment.

While on the surface, the Armstrong-Boren Amendment appears to be a sound way of increasing the potency of the balanced budget amendment, it in fact is unnecessary, will increase opposition to the proposal and could create a pro-tax bias.

The last sentence of section one of S.J. Res. 5 states: "The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth" in the annual budget. Congress cannot simply pass a budget based on optimistic spending projections and then spend as it pleases because actual outlays must equal budgeted outlays. S.J. Res. 5 adequately provides for enforcement of budget control, making the Armstrong amendment unnecessary.

The Armstrong-Boren Amendment, if added, could make the Balanced Budget-Tax Limitation Amendment vulnerable to the charge that it could make a recession worse. If the economy should take a sudden, unanticipated downturn leading to a shortfall in government revenues, Congress, unable to raise the debt ceiling under the Armstrong provision, could be forced to increase taxes or cut spending at precisely the time these actions could be unwise. Under S.J. Res. 5, if the economy tumbled into a recession during a fiscal year, actual receipts could fall below expected levels, and create a small deficit. However a debt caused by increased spending would not be permitted by S.J. Res. 5.

Senator Armstrong wanted to guarantee that all debt be approved by a three-fifths vote. But his proposal won't guarantee either a balanced budget or a vote on a deficit for each year since the requirement for an increase in the national debt ceiling would not necessarily cover each fiscal year. For example, Congress could raise the debt ceiling by enough to cover a period for more than one fiscal year.

Under the Armstrong-Boren Amendment Congress would probably respond at the last minute if income fell below actual levels. The easiest way to balance the budget in such a situation might be to raise taxes. This is because the amendment requires a constitutional majority to raise taxes, not three-fifths. Armstrong's amendment could create a pro-tax bias in the amendment.

Finally, the Armstrong-Boren Amendment could be better drafted to achieve its goals. For instance, the amendment makes no provision for lowering the debt ceiling, only for raising it. It could be interpreted as saying that it would permanently set the level of federal debt, making repayment of the debt during surplus years impossible. The possibility also exists that a lame duck Congress may vote to double or even triple the federal limit, making that part of the amendment a dead letter for years or decades.

Although no other amendments were adopted, several came close to adoption. The one that came closest was the amendment offered by Senator Howell Heflin. His amendment would allow Congress, during times of declared military emergencies, to exempt outlays required by the military emergency from the balanced budget requirement.

We are unalterably opposed to such a weakening of S.J. Res. 5 since such a change is designed to solve a non-problem. The amendment already provides for situations that may threaten our nation's security, short of war. First, there should be a contingency fund in the budget. Part of the contingency fund could be used for an unforeseen threat.

Second, other programs could be cut, and the funds could be redirected to meet the threat.

Third, the amendment allows for more spending when new taxes are authorized or when a specific deficit is approved.

Any language drafted to provide for waiving the amendment would be necessarily vague, and an open invitation to future Congresses to subvert the amendment. Defining threats to our nation's security in a constitutional amendment that should qualify for a waiver, but which would not be abused, is impossible.

A complete waiver of the amendment for defense spending to protect the nation would also allow uncontrolled increases in spending for programs unrelated to our national defense.

Drafting a partial waiver so that it applies only for defense spending has severe problems too. It could allow the entire defense budget to be placed off the budget, leaving no yardstick for citizens to judge how well other federal spending was being controlled. A waiver for defense spending would make the amendment complex and hamper the public's ability to monitor congressional compliance.

Another danger would come from congressional attempts to redefine essential national security programs. This problem is analogous to the capital budget: the definition of what could qualify as capital expenditure is vague; the definition of defense spending is equally vague.

Finally, history points to the superfluosness of such a waiver. Since before World War II, Congress has always passed urgent military spending bills during times of national emergencies by margins that would easily meet the requirement of a three-fifths vote that is already in place in S.J. Res. 5. I have appended a documentation of congressional votes on major defense bills during times of national emergencies short of a declared war since 1937.

Another amendment was offered on several occasions by Senator Ford and others to require the president to submit to Congress a balanced budget for each fiscal year. Some versions of this amendment did not allow the president to recommend a deficit. This type of amendment should be rejected because it would constitutionalize a statute that has proved to be ineffective. It is also unnecessary for achieving its stated goal.

In April of 1979, Congress included in the public debt limit (Public Law 96-5) a provision to require the president to submit a balanced budget alternative if his recommended budget would result in a deficit for fiscal years 1981 or 1982. President Carter complied with these legal requirements but his recommendations were of little use to the Congress. In fiscal year 1981 the budget document was over 600 pages long, not including the Appendixes or Special Analyses. Yet the alternative budget was not even seven pages long. In fiscal year 1982, the budget document was again over 600 pages long, while the balanced budget alternative was under 9 pages. Clearly, a president could

comply with such a provision by offering a skimpy balanced budget alternative with little or no detail while submitting a detailed budget document with a deficit. We certainly don't need to put that requirement in the Constitution.

Although the goal of this type of amendment has merit, it's unnecessary and unwise to place it in the Constitution. The simple reason is that statutes can bind the president. For example, the president submits a budget every year because of a 1921 law. Congress will have to pass implementing legislation to S.J. Res. 5. Such legislation is the appropriate place to instruct the president on the details which should be included in submission of his budget. Congress can require time deadlines for submission of such a balanced budget or an alternative.

One other amendment narrowly rejected by the Senate was an amendment by Senator Gorton to restrict the judicial power of the United States in most issues arising under the proposed amendment. The amendment would have specified that the power of the federal judiciary could not "extend to any case or controversy arising under this article, except for cases of controversy seeking to define the terms used herein, or directed exclusively at implementing legislation adopted pursuant to this section." Adoption of this amendment would be unwise.

Although I feel that the federal courts have, at times, pursued a course of harmful judicial activism, this amendment does not properly address that concern. It also erodes protections against abuse of S.J. Res. 5.

This particular provision would seem to intimidate a cautious court, while perhaps also extending an invitation to an activist court. I agree with Senator Heflin's remarks in opposition to this amendment which he made on the Senate floor last July. He compared our structure of government to "a three legged stool." The three legs consist of the legislative branch, the executive branch, and the judicial branch. As Senator Heflin said, "if we act to cut off one of the legs of the three legged stool, it would mean that the stool cannot stand, and if it is a sitting stool, you can not sit upon it."

S.J. Res. 5 offers protection for the American people from fiscal abuses by the Congress and the president. The most important controversies that may

arise under S.J. Res. 5 are those where these two branches seek to violate the limits of S.J. Res. 5. If such an event were to occur, the third branch, the judiciary could prove to be an essential check.

In conclusion, S.J. Res. 5 represents a truly significant improvement in federal budget making procedures. With this amendment, we will finally be able to bring spending and taxes under control and enjoy the benefits of a balanced budget. We hope the Congress will approve it. If not, I believe that the people will demand a constitutional convention to draft a similar proposal.

HISTORY OF CONGRESSIONAL VOTES ON MAJOR DEFENSE SPENDING
BILLS DURING URGENT MILITARY SITUATIONS (1937-1982)

PRE-WORLD WAR II

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>Year</u>	<u>House</u>	<u>Vote</u>
HR 5232	Navy Dept. Appropriations	\$528 million	1937	<u>Final Passage</u> House Senate <u>Conference Report</u> House Senate	Voice 64-11 Voice Voice
HR 6692	Army Appropriations FY 1938	\$417 million	1937	<u>Final Passage</u> House Senate <u>Conference Report</u> House Senate	Voice Voice Voice 300-42 Voice
HR 8993	Navy Department Appropriations, FY 1939	\$546.9 million	1938	<u>Final Passage</u> House Senate	Voice Voice
HR 9995	Army Appropriations FY 1939	\$459 million	1938	<u>Final Passage</u> House Senate <u>Conference Report</u> House Senate	Voice Voice Voice Voice Voice
HR 6149	Navy Appropriations Bill	\$770.5 million	1939	<u>Final Passage</u> House Senate	297-58 61-14
HR 6791	Supplemental Military Appropriations	\$223 million	1939	House Senate	Voice Voice
HR 7805	Army & Navy Appropriations, FY 1941	\$740 million	1940	<u>Final Passage</u> House Senate <u>Conference Report</u> House Senate	Voice Voice Voice Voice Voice

PRE-WORLD WAR II (cont.)

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>Year</u>	<u>House</u>	<u>Vote</u>
HR 9209	Military Establishment Appropriations, FY 1941	\$785 million	1940	Final Passage House Senate Conference Report House Senate	Voice 74-0 Voice Voice
HJ Res 607	Additional Military Establishment Appropriations, FY 1941	\$337 million	1940	Final Passage House Senate	Unanimous Voice
HJ Res 614	Supplemental Defense Housing Measure, FY 1941	\$75 million	1940	Final Passage House Senate	Voice Voice
HR 10263	Supplemental National Defense Appropriations, FY 1941	\$5 billion	1940	Final Passage House Senate Conference Report House Senate	Voice Unanimous Voice Voice
HR 10572	Third Supplemental Defense Appropriations, FY 1941	\$2 million (Defense Research)	1940	Final Passage House Senate	Voice Voice
HR 4124	Supplemental National Defense Appropriations	\$4.4 billion	1941	Final Passage House	327-0
HR 4050	Supplemental National Defense Appropriations	\$7 billion	1941	Final Passage House Senate	336-55 67-19
Hk 6159	Supplemental Military Appropriations	\$10 billion	1941	House Senate	Voice Voice
HR 5788	Supplemental Military Appropriations	\$6 billion	1941	Final Passage House Senate	328-67 59-13

U.S. declared war on Japan December 8, 1941, Germany and Italy December 11, 1941.

PRE-KOREAN WAR BUILD-UP

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1947</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
HR 3493	Navy Appropriations, FY 1948	\$3.1 billion		5/20/47	House	Voice
HR 3493	Navy Appropriations, FY 1948	\$3.3 billion		6/24/47	Senate	Voice
HR 3493	Navy Appropriations, FY 1948, Conference Report	\$3.2 billion		7/15/47	House Senate	Voice Voice
HR 3678	Military Establishment Appropriation Bill	\$5.2 billion		6/5/47	House	Voice
HR 3678	Military Establishment Appropriation Bill	\$5.6 billion		7/15/47	Senate	Voice
HR 3678	Military Establishment Appropriation Bill, Conference Report	\$5.4 billion		7/25/47	House Senate	Voice Voice
<u>1948</u>						
HR 6226	National Defense Supplemental, 1948	\$923.1 million		4/15/48	House	343-3
HR 6226	National Defense Supplemental, 1948	\$958.2 million		5/6/48	Senate	74-2
HR 6226	National Defense Supplemental, 1948, Conference Report	\$948.9 million		5/11/48	House Senate	Voice Voice
HR 6771	National Military Establishment, Military Functions	\$6.4 billion		6/2/48	House	350-2
HR 6771	National Military Establishment, Military Functions	\$6.8 billion		7/17/48	Senate	Voice
HR 6771	National Military Establishment, Conference Report	\$6.7 billion		7/19/48	House Senate	Voice Voice
HR 6772	Department of the Navy	\$3.6 billion		6/3/48	House	Voice

PRE-KOREAN WAR BUILD-UP (cont.)

Bill/Law	Title/Description	Amount		House	Vote
		1948 (cont.)	Date		
HR 6772	Department of the Navy	\$3.8 billion	6/15/48	Senate	Voice
HR 6772	Department of the Navy, Conference Report	\$3.7 billion	6/17/48	House Senate	Voice Voice
1949					
HR 4146 PL 434	National Military Establishment Appropriations Bill, FY 1950	\$15.6 billion	4/13/49	House	271-1
HR 6427 PL 430	Second Supplemental Appropriations Bill	\$1,079 million, included \$915 million for military aid and Military National Establishment.	8/29/49	Senate	Voice
			10/14/49	House	Voice
			10/18/49	Senate	Voice

KOREAN WAR

North Korea invaded the Republic of Korea June 25, 1950. U.S. ground forces landed June 30. On July 24, President Truman asked Congress for \$10 billion for armed services for Korean military operations.

Bill/Law	Title/Description	Amount		House	Vote
		1950	Date		
HR 9526 PL 848	First Supplemental Appropriations/In direct response to the cost of the Korean War and President Truman's July 24 request.	\$17.2 billion total. Included \$11.6 billion for the Defense Dept. \$4 billion for military aid.	8/26/50	House	311-1 Final Passage
			9/14/50	Senate	Voice Final Passage
HR 9920 PL 911	Second Supplemental Appropriations/Additional appropriations for the Korean War.	\$19.8 billion total. Included \$16.8 billion for the Defense Dept.	12/15/50	House	Voice
			12/21/50	Senate	Voice
			1/1/51	House	Voice Conference Report
			1/2/51	Senate	Voice Conference Report

<u>Bill/Law</u>	<u>Title/Description</u>	<u>KOREAN WAR (cont.)</u>			<u>House</u>	<u>Vote</u>
		<u>Amount</u>	<u>1951</u>	<u>Date</u>		
S Res 99	Affirmed the dispatch of four U.S. divisions to NATO by President Truman.			4/4/51	Senate	69-21
HR 9526	Supplemental Appropriations for 1951.	\$16.8 billion total, \$11.6 billion for military purposes.		8/26/51	House	310-1 Final Passage
HR 5054	Defense Department Appropriations for 1952.	\$56.9 billion		8/9/51	House	348-2 Final Passage
				9/13/51	Senate	79-0 Final Passage
HR 7391	Defense Appropriations for 1953.	\$45.7 billion	<u>1952</u>	4/9/52	House	Vote Final Passage
				6/30/52	Senate	66-0 Final Passage
HR 5969	Defense Appropriations for 1954.	\$34.4 billion total, \$2 billion for the Korean War.	<u>1953</u>	7/2/53	House	386-0 Final Passage
				7/23/53	Senate	Vote Final Passage
<u>SPUTNIK AND THE "MISSILE GAP"</u>						
Sputnik was successfully launched on October 4, 1957.						
<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1958</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
HR 9739 PL 325	Authorization of supplemental funds for construction of Air Force SAC bases.	\$550 million		1/15/58	House	374-0 Final Passage
				1/30/58	Senate	Vote Final Passage
HR 10146 PL 322	Supplemental appropriations to accelerate strategic programs	\$1.3 billion		1/23/58	House	388-0 Final Passage
				2/3/58	Senate	78-0 Final Passage

SPUTNIK AND THE "MISSILE GAP" (cont.)

Bill/Law	Title/Description	Amount	1958 (cont.)	Date	House	Vote
HR 12738 PL 724	Defense Appropriations for 1959	\$39.6 billion		6/5/58	House	390-0 Final Passage Final Passage
				7/30/58	Senate	71-0 Final Passage
HR 13015 PL 685	Authorization for funds for Military Construction	\$1.76 billion		7/10/58	House	379-2 Final Passage Final Passage
			1959	7/30/58	Senate	80-0 Final Passage
HR 7454 PL 166	Defense Appropri- ations for 1960	\$39.2 billion		6/3/59	House	392-3 Final Passage Final Passage
				7/14/59	Senate	90-0 Final Passage
HR 5674 PL 149	Authorization for funds for Military Construction	\$1.2 billion		4/16/59	House	379-7 Final Passage Final Passage
				6/30/59	Senate	89-3 Final Passage
S 1096 PL 12	Authorization for funds for NASA	\$48.4 million		3/10/59	Senate	91-0 Final Passage Final Passage
				4/14/59	House	Voice Final Passage
HR 7007 PL 86	Authorization for funds for NASA	\$485.3 million		5/20/59	House	294-128 Final Passage Final Passage
				6/4/59	Senate	81-1 Final Passage
HR 10809 PL 481	Authorization for funds to accelerate the Saturn Rocket Program	\$915 million		3/9/60	House	399-10 Final Passage Final Passage
				5/3/60	Senate	78-0 Final Passage
HR 10777 PL 500	Authorization for funds for Military Construction	\$1.2 billion		3/9/60	House	407-4 Final Passage Final Passage
				5/13/60	Senate	Voice Final Passage
HR 11998 PL 601	Appropriations for Defense for 1961	\$40 billion		6/30/60	House	402-5 Conference Report
				6/30/60	Senate	83-3 Conference Report

VIETNAM WAR

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
		<u>1964</u>			
HJ Res 1145	Southeast Asia Resolution ("Gulf of Tonkin" Res.)		8/7/64	House	414-0
HJ Res 1145	Southeast Asia Resolution ("Gulf of Tonkin" Res.)		8/7/64	Senate	88-2
February 1965: President Johnson ordered bombing raids over North Vietnam. On June 8, 1965, U.S. commanders authorized to commit 23,000 U.S. advisors to combat.					
		<u>1965</u>			
S 800	Military Procurement Authorization, FY 1966	\$15.2 billion	4/6/65	Senate	85-0
HR 7657	Military Procurement Authorization, FY 1966	\$15.3 billion	5/5/65	House	396-0
HJ Res 447	Supplemental Appropriations for Military operations in SE Asia	\$700 million	5/5/65	House	408-7
HJ Res 447	Military Supplemental Appropriations, FY 1966	\$700 million	5/6/65	Senate	88-3
NOTE: HJ Res 447 was approved in less than 53 hours after President Johnson's request.					
HR 9221	Defense Dept. Appropriations, FY 1966	\$45.1 billion	6/23/65	House	407-0
			8/25/65	Senate	89-0
		<u>1966</u>			
HR 12889 S 2791	Supplemental Defense Authorization for Vietnam War, FY 1966	\$4.8 billion	3/1/66	House	393-4
HR 13546	Defense Dept. Vietnam Supplemental Appropriations, FY 1966	\$13.1 billion	3/1/66	Senate	93-2
			3/15/66	House	389-3
			3/22/66	Senate	87-2

VIETNAM WAR (cont.)

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1966 (cont.)</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
S 2950	Military Procurement Authorization, FY 1967	\$17.5 billion		4/28/66	Senate	Voice
				6/14/66	House	356-2
S 2950	Military Procurement Authorization, FY 1967 (Conference Report)	\$17.5 billion		7/12/66	Senate	81-1
				7/12/66	House	359-2
HR 15941	Defense Appropriations, FY 1967	\$58.6 billion		7/20/66	House	393-1
HR 15941	Defense Appropriations, FY 1967	\$58.1 billion		8/18/66	Senate	86-0
HR 17637	Military Construction and Housing Appropriations, FY 1967	\$1 billion		9/14/66	House	346-3
				10/10/66	Senate	Voice
<u>1967</u>						
S 665	Supplemental Defense Authorization for Vietnam War	\$4.4 billion		3/1/67	Senate	89-2
S 665	Supplemental Defense Authorization for Vietnam War (Conference Report)	\$4.5 billion		3/8/67	House	364-13
HR 7123	Vietnam Supplemental FY 1967	\$12.2 billion		3/16/67	House	385-11
HR 7123	Vietnam Supplemental FY 1967	\$12.2 billion		3/20/67	Senate	77-3
S 666	Military Procurement Authorization, FY 1968	\$20.8 billion		3/21/67	Senate	86-2
HR 9240	Military Procurement Authorization, FY 1968	\$21.5 billion		5/9/67	House	401-3
HR 10738	Defense Dept. Appropriations, FY 1968	\$70.2 billion		6/13/67	House	407-1

VIETNAM WAR (cont.)

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1967 (cont.)</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
HR 10738	Defense Dept. Appropriations, FY 1968	\$70.1 billion		8/22/67	Senate	84-3
HR 10738	Defense Appropriations FY 1968, Conference Report	\$69.9 billion		9/12/67	House	365-4
				9/13/67	Senate	74-3
			<u>1968</u>			
HR 16703	Military Construction Authorization, FY 1969	\$1.8 billion		4/25/68	House	346-14
				6/25/68	Senate	78-3
S 3293	Military Procurement Authorization, FY 1969	\$21.6 billion		4/19/68	Senate	54-3
				7/11/68	House	363-15
S 3293	Military Procurement Authorization, FY 1969 Conference Report	\$21.6 billion		9/10/68	House	322-15
				9/11/68	Senate	Voice
HR 18785	Military Construction Appropriations, FY 1969	\$1.7 billion		7/29/68	House	Voice
				8/1/68	Senate	71-3
HR 18707	Defense Dept. Appropriations, FY 1969	\$72.2 billion		9/12/68	House	333-7
HR 18707	Defense Dept. Appropriations, FY 1969	\$71.8 billion		10/3/68	Senate	55-2
HR 18707	Defense Appropriations FY 1969, Conference Report	\$71.8 billion		10/11/68	House	213-6
				10/11/68	Senate	Voice
			<u>1969</u>			
HR 14751	Military Construction Appropriations, FY 1970	\$1.4 billion		11/13/69	House	343-32
HR 15090	Defense Dept. Appropriations, FY 1970	\$69.3 billion		12/8/69	House	330-33

VIETNAM WAR (cont.)

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1969 (cont.)</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
HR 14751	Military Construction Appropriations, FY 1970	\$1.69 billion		12/8/69	Senate	82-0
HR 15090	Defense Dept. Appropriations, FY 1970	\$69.6 billion		12/15/69	Senate	85-4
			<u>1970</u>			
HR 17123	Military Procurement Authorization, FY 1971	\$19.9 billion		5/6/70	House	326-69
				9/1/70	Senate	84-5
HR 19590	Defense Dept. Appropriations, FY 1971	\$66.4 billion		10/8/70	House	274-31
				12/8/70	Senate	89-0
HR 17970	Military Construction Appropriations, FY 1971	\$2.04 billion		6/11/70	House	308-57
			<u>1971</u>	10/14/70	Senate	Voice
HR 8687	Defense Procurement Authorization	\$21 billion		6/17/71	House	331-58
HR 8687	Defense Procurement Authorization	\$21.4 billion		10/6/71	Senate	82-4
HR 11731	Defense Appropriations, FY 1972	\$70.8 billion		11/23/71	Senate	80-5
HR 11731	Defense Appropriations, FY 1972	\$70.5 billion		12/15/71	House	293-39
			<u>1972</u>			
HR 15495	Defense Procurement Authorization, FY 1973	\$21.3 billion		6/27/72	House	334-59
HR 15495	Defense Procurement Authorization, FY 1973	\$20.5 billion		8/2/72	Senate	92-5
HR 15495	Defense Procurement Authorization, FY 1973 Conference Report	\$20.9 billion		9/13/72	House	335-44

VIETNAM WAR (cont.)

<u>Bill/Law</u>	<u>Title/Description</u>	<u>Amount</u>	<u>1972 (cont.)</u>	<u>Date</u>	<u>House</u>	<u>Vote</u>
HR 15495	Defense Procurement Authorization, FY 1973 Conference Report	\$20.9 billion		9/15/72	Senate	73-5
HR 16754	Military Construction Appropriations, FY 1973	\$2.2 billion		9/25/72	House	293-12
HR 16754	Military Construction Appropriations, FY 1973	\$2.3 billion		10/3/72	Senate	87-0
HR 16593	Defense Dept. Appropriations, FY 1973	\$74.6 billion \$74.5 billion		9/14/72 10/2/72	House Senate	322-41 70-5
HR 16754	Military Construction Appropriations, FY 1973 Conference Report	\$2.3 billion		10/12/72	House	333-10
HR 16593	Defense Dept. Appropriations, FY 1973 Conference Report	\$74.4 billion		10/12/72 10/12/72 10/13/72	Senate House Senate	Voice 316-42 Voice

Mr. DAVIDSON. But just as simple matter of arithmetic, I think people can understand why the bias is where it is because if you have a society, as we have today, where we have tens of thousands of occupations, a good many organizations in the Washington yellow pages are organized to represent only a bare chemical trace of the population.

But let us say for simplicity of arithmetic, you have a lobby group which is coming to Washington or is in Washington that represents 1 percent of the population, which is a higher estimate for most lobby groups, but say 1 percent.

It is clear that it has an opportunity to do one of two things; to either try to produce general good, which is to say some benefit to the economy, something that will improve growth—a lobby against waste in Government or to improve the economy of the Federal operation—in which its members will share only in one-hundredth, while they provide the entire cost of any good thing that they did along those lines.

Or they can do what practically every one of them does, which is to say they can recognize that even if a particular appropriation is bad for the country at large—perhaps it costs \$2 of economic growth for every dollar that is allocated to that group—they are still far better off because they will get 100 percent of that benefit, whereas they will only share one one-hundredth of the cost.

It is rational for them to behave that way up to the point that the social cost of what they achieve is a hundred times as great as the benefit. Assuming that this arithmetic is an exaggeration on the positive side, because most of these groups do not represent even so much as one-hundredth of the population, it is clear that if everybody behaves in a rational way, which is to say if everyone behaved more or less as the textbooks tell us people behave in their economic relationships, you would expect—indeed, it would be the only outcome—that people would continuously dig deeper and deeper into one another's pockets in the hopes of getting something for nothing.

This, I think, is not unique to this country, but, in fact, if we look around the world, as I have indicated that we ought to do, we see that it is a common feature of government. And one of the great blessings we have, I believe, in this country is that our founders left us with a mechanism which could take effect to prohibit this process from going its merry way to the point that we reach the stage that someplace like Argentina or many of these other countries have reached.

I think that it is not possible for anybody, in fact, in Argentina or Brazil or one of these other countries to have achieved the kind of restraint which we have because not only the Constitution provides that the Congress has a mechanism of amendment, but it also provides that if the Congress will not respond, we can invoke through the States an alternative method of amendment.

That great division of powers that our founders wisely left us is going to serve us well in this instance if it enables us to get that kind of amendment which nobody in Argentina or Brazil or any other place could do.

One of the things that I found was very interesting early on in this campaign, which started back in 1975 to get the States to call

for a constitutional convention, was the tremendous amount of interest which it engendered in the Latin American press.

I was interviewed, long before *Time* magazine showed any interest in this issue, by *Viazo*, the Brazilian magazine which has come several times to check on this, and the Argentines, also because those people who have gone through this experience firsthand are astonished that we are willing to follow in their footsteps.

I believe that any one of them would have been very grateful for the chance that you have now on behalf of the American people to put an end to this prisoner's dilemma arrangement—I should not say put an end, but to modify it to limit the damage that can be done, so that while we do not have a panacea, at least we will not go down the road full throttle in the direction we are now headed.

Senator HATCH. Ms. Cox, do you have additional comment?

Ms. Cox. Well, actually, I have a question Mr. Chairman. You asked me a question earlier and I will presume to ask you one now.

I concede that there are biases in the system and I concede that there are—I hope you will concede that there are alternative remedies. Going back to the point I made earlier about the mood of the Senate immediately after you passed a constitutional amendment, and given the need to do something sooner rather than later to deal with the deficits, and as I am willing to stipulate that whether the constitutional amendment passes both Houses by a constitutional majority, it will get a majority vote in both Houses anytime you bring it to the floor, would you be willing to agree to a set of procedures where, immediately after the disposition of the vote on the amendment, Congress would turn to consideration of a budget that would deliver on the promise of that amendment by the time at which you expect the amendment would be ratified, complete with instructions to the necessary committees to report the changes in law that would be necessary to do that.

It is my very real fear that in the absence of that kind of progression, you allow your colleagues a real free lunch; you let them say they voted for a balanced budget, but you do not ask them to make the hard choices that are involved in that.

Senator GRASSLEY. I do not have to respond for Senator Hatch, but I would like to because I have been kind of in the middle of an effort to freeze both defense and nondefense parts of the budget.

Considering the normal 2½ to 3 years for ratification of an amendment and the period of time to get it through the Congress this year, a freeze instituted immediately after the Senate passed that would, in about 3 years, get us to a balanced budget or darned close, as well as we can predict, based on certain statistics that we have to evolve into the equation.

So I would be willing to do that and, with or without a constitutional amendment, give my colleagues an opportunity, at least within the Budget Committee, to pursue that course.

Senator HATCH. Well, let me say this. You asked what was the feeling on the Senate floor when the balanced budget amendment passed. I perhaps can relate that as well as anybody, having been intimately involved in the fight.

I believe there was a variety of feelings. On the part of those of us who led the fight, it was a feeling of great elation and relief because it had been a tough 3 weeks. Now, the feeling of the average

Senator there who may or may not have been totally enthused about the fight, I believe, was a feeling we had done something worthwhile, significant, historic, and something that would lend a solution to some of the problems.

On the part of certain opponents, there was a feeling of despair. Despair that once this happens, should the House be counted on to go along with it, there would be a sudden end to the glory days of being able to spend whatever they wanted.

I believe there was a feeling on everybody's part it is going to take a good 5 years of real hard work to try and resolve these problems.

To answer the remaining part of your question, I have always been willing to do whatever it takes to try and resolve the budgetary problems. I realize there is not a Senator sitting in the U.S. Senate who occasionally does not vote for spending because he has to for his own State or for some other particular reason. Most of those spending programs are good programs.

The reason I think we are going to have to go to external constraints, like a balanced budget/tax limitation amendment, is because we will have to choose among competing priorities, most of which are good, if you want to use that generic term, but all of which have to be distinguished between in order to arrive at any kind of fiscal sanity.

Instead of opposing each other or rather our two goals being opposite, we ought to find a common ground. Your main objection to the balanced budget amendment is you do not think it will work. You do not know it will not work; you just do not think it will work.

It does work in the States, though I admit the States are a different entity and have a different set of economic circumstances. On the other hand, there is no reason why it should not work like the States.

Your contention is that what we need are some internal constraints in addition to external constraints. Maybe what we need is to get together and combine both approaches for the benefit of this country. That may be the final answer.

Ms. Cox. Well, you know, Senator, I have said maybe more often than you like that we will make ourselves available to your staff or anybody else anytime they want whatever advice you think we can offer—

Senator HATCH. I study what you come out with, you know.

Ms. Cox [continuing]. On how to better order your budgetary decisions.

The only point I was trying to make is: whether the constitutional amendment becomes the constitutional law of the land or not, for a Senator or Congressman who has just voted for it, it does give them something to point to as an excuse for what must be done.

And I am sufficiently concerned and serious about the issue as to want to take advantage of that moment in time and say, OK, whether you get the necessary two-thirds majority or not, a majority of the Members of both Houses, I am persuaded, will support that amendment. And having done so, they ought to be prepared to support the changes in law that will be necessary to fulfill its promise.

Senator HATCH. I am intrigued by that suggestion. Let us work together and see if there is some way to pass this amendment by the requisite two-thirds, and at the same time, come up with some sort of internal constraints that might work as well.

Let me turn to Senator Grassley because he has a couple of questions. I am going to submit the rest of my questions in writing and hope each of you will take some time to answer them I would like them answered within the next week.

Senator GRASSLEY. There are two points following on the recent conversation that I would like to pursue before I ask Mr. Davidson or anybody else who wants to respond to respond to a couple of questions that I have.

No. 1, regardless of this amendment passing, if anybody feels that we can wait until we get a constitutional amendment passed to do something with the present situation we are in, there is not going to be an opportunity at that point in time. We have to do something very dramatic, and do it very soon, and I do not think we have more than 12 months to do it in is my judgment of it.

I still support the constitutional amendment to take care of the long-term problems so that we have a Government of law as opposed to a Government of people in Government making the decisions. And I think our basic respect for law in our Western society is going to be enough to see that things like we are in now in the last 15 years do not repeat themselves, so that we do not have to worry about only having 12 months to solve this horrendous deficit situation we are in.

I suppose maybe my strong feeling on that comes from discipline that you get as a politician if you come up through the State legislative process. While I was in the State legislature, and even since, whether the legislature is controlled by Republicans or Democrats, there is an adherence to the concept that we have to have a balanced budget and we will have a balanced budget. And we are either going to adjust the expenditures downward or we are going to adjust taxes upward, or do both to accomplish the goal, and it is accomplished.

Again, I do not think that there is likely to be too much, if I could use the term, Mickey Mouse activity to get around the constitutional stipulation. I think it is basically respected not only in my State, but I think in most States, but particularly I can say in my State.

I would like to ask Mr. Davidson, because he was the only one I had an opportunity to hear testify this morning, even though I will have a chance to review the testimony, in regard to the experience of other industrialized nations, you mentioned Switzerland as a very good example.

Let us suppose other Western nations do not have something that we would like as well as what Switzerland has, but do they have some sort of machinery that disciplines their parliamentarians that maybe we can learn on and draw from?

Mr. DAVIDSON. That is a good question, Senator, and I have several answers to it. First of all, the West German Constitution has an explicit balanced-budget requirement. However, it is a weak requirement and I do not think it comes into play as much in the operation of the German Constitution as some other factors do.

I would point to the experience that has sobered the French Socialists a bit, who came to office riding on a program of wild deficits. They discovered very quickly, however, that they had to shift gears practically from fifth gear into reverse because in France, as indeed in most of the other countries of the world, their economic base was sufficiently weak and they are sufficiently vulnerable to foreign exchange reaction that they were not able to take deficits to the extreme that we are able to do. We have the advantage of printing the world's reserve currency for the time being, which gives us a greater latitude for mischief than other countries have.

What was happening in France, with the fall of the franc at a very precipitous rate and the extremely high unemployment that resulted and the other difficulties they had, was that even though they were certainly ideologically opposed to being responsible because President Mitterand's campaign had been organized around the premise that he was going to run large deficits, he soon discovered that he had to reduce the spending and to raise taxes in order to bring the deficit under control.

I think that that is the same phenomenon that plays in on most of the other countries. They find that they cannot indulge in the degree of irresponsibility that we can, and I think that it is only a matter of time until we would begin to feel the same kind of pressures.

But, unfortunately, a lot more difficulty would have occurred here before we would have had the chance to feel the foreign exchange reaction and the collapse of the bond markets, and so forth, that has been typical of France.

Even in Britain, during the late 1970's the bond market essentially disappeared as a result of the high inflation and the deficits that were being run at that time. That is not a good thing for Great Britain, and the British economy, as we know, has been one which has struggled.

Even today, under Margaret Thatcher's government which has brought the deficits under control, inflation is at an extremely high level at a fairly late stage of the economic cycle. So I would predict that the next time around they are going to have an even worse problem.

What I am hoping for this country is that we could learn from the experience of other countries, and especially take the example of Switzerland which does have a very strong restriction, perhaps is the strongest in the world, which prohibits, the Swiss debt from being monetized. So they cannot float debt and then have it be monetized by the Government. They cannot print money for their debt; they have very little of it.

Now, I do not think anybody would think that we could put into place in the United States an equivalent measure which said the Federal Reserve cannot buy U.S. securities, nor can we print money. But if we had that kind of provision, I can assure you we would have sound money in the United States, and probably we would have a much stronger economy.

Those basically are the answer to your question. I think we see that there are two parameters that keep other countries from doing the sorts of things that we do. One is that they are too small to get away with it very long, and the other, I think, is that the ones that

try to get away with it do not and they go the Argentine or the Israeli route.

Mr. UHLER. Mr. Chairman, may I make a couple of maybe closing remarks in response to issues that have been raised?

Senator HATCH. Sure.

Mr. UHLER. Senator Grassley has raised the question of a spending freeze. Of course, last year, Senator Hatch, you were a progenitor of a modified spending freeze budget, which demonstrates that, with some degree of restraint and will, we can reach a balance point over a period of 4 to 5 years. Senator Grassley's plan achieves that as well.

Senator HATCH. I have to tell you it was a 5-year plan for reaching a balanced budget, but only if we assumed a high growth rate. It shows how very difficult it is to achieve a balanced budget unless we do start now. Carol Cox's words are very important, but I am suggesting that part of starting now is the balanced budget/tax limitation amendment.

Mr. UHLER. There seems to be nothing observable on the Hill that suggests the level of political will necessary to commence that process with approval of the amendment itself, and commencement of the process of ratification, Congress is more likely to make marginal political adjustments and have the political will to get on a new track so that we do not have a wide gap between expenditures and revenues when the amendment takes effect.

Let me add one final thought. On the issue of the design of the amendment, Senate Joint Resolution 5, it has been carefully crafted. The operational realities of the Congress have been taken into consideration in the design of the amendment.

Suggestions that the amendment might not work, I think, are premised on a notion that Members of the Congress will ignore it and honor it only in the breach.

I do not share that view of the attitudes of those in the Government. The Constitution is, by and large, honored. Constitutions rule government; simply statutes rule men. Governments seem to hold closely to constitutional mandates.

In California recently, in a bad, out-of-balance-budget situation, there was some talk of ignoring the balanced budget requirement. There were some adjustments in satisfying the balanced budget requirement, but satisfied it was, because it was constitutional in nature.

So I would suggest to those who feel that a constitutional amendment might be honored in the breach that if they really have come to that point in their thinking, then this noble experiment in self-government is all over.

Senator HATCH. Thank you. We have Senator Dole here. Senator, do you have any comments or questions for this particular panel?

Senator DOLE. I did not hear all of the testimony, but I did want to put a statement in the record.

Senator HATCH. Without objection, we will put your statement in the record.

[The following was received for the record:]

PREPARED STATEMENT OF SENATOR DOLE

MR. CHAIRMAN:

I AM SURE MY COLLEAGUES JOIN ME IN EXPRESSING APPRECIATION TO YOU FOR SCHEDULING EARLY HEARINGS THIS YEAR ON S.J. RES. 5, THE FISCAL RESTRAINT AMENDMENT THAT WAS INTRODUCED LAST YEAR BY DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE AND OTHERS. ACTUALLY, I SHOULD SAY THAT THE AMENDMENT WAS REINTRODUCED, BECAUSE THIS IS ESSENTIALLY THE PROPOSAL THAT PASSED THE SENATE IN 1982 AS S.J. RES. 58. AS YOU KNOW, I STRONGLY SUPPORTED THE AMENDMENT AT THAT TIME, AND I CONTINUE TO SUPPORT IT. THAT DOES NOT MEAN THAT IT IS A PERFECT PROPOSAL, OR THAT IT DOES NOT DEMAND A FRESH LOOK AT THIS TIME--BUT IT IS A SOUND PROPOSAL THAT GATHERED STRONG BIPARTISAN SUPPORT, AND THAT IS NOT AN INCONSIDERABLE FACTOR IF WE ARE SERIOUS ABOUT GETTING SOMETHING REPORTED OUT FOR CONSIDERATION BY THE STATES.

TRACK RECORD

AS THIS SUBCOMMITTEE WELL KNOWS, THERE IS A CONSIDERABLE HISTORY BEHIND THIS AMENDMENT ALREADY. I HAVE BEEN PRIVILEGED TO WORK WITH MANY OF YOU--PARTICULARLY SENATOR HATCH, SENATOR DeCONCINI, AND THE CHAIRMAN OF THE FULL COMMITTEE, SENATOR THURMOND--IN TRYING TO DEVELOP A STRONG BUT FLEXIBLE BALANCED BUDGET RULE THAT CAN WIN CONSENSUS SUPPORT FOR INCLUSION IN THE CONSTITUTION. IN THE 96TH CONGRESS AN EARLIER EFFORT, S.J. RES. 126, FAILED BY ONLY ONE VOTE TO WIN APPROVAL BY THE FULL JUDICIARY COMMITTEE. IN 1982, WITH THE SUPPORT OF PRESIDENT REAGAN AND A NUMBER OF GRASSROOTS ORGANIZATIONS, WE WON A MAJOR VICTORY IN THE SENATE--A VICTORY THAT UNFORTUNATELY WAS FRUSTRATED BY DEFEAT IN THE HOUSE AFTER PEREMPTORY CONSIDERATION.

BUT IT SHOULD BE CLEAR TO EVERYONE THAT AS TIME GOES ON, WE GET EVER CLOSER TO OUR GOAL. BY NOW OUR ACUTE FISCAL DILEMMA IS APPARENT TO EVERYONE. OUR FAILURE TO CONTROL SPENDING AND MATCH OUR WILLINGNESS TO SPEND WITH AVAILABLE REVENUES HAS BROUGHT ON DEFICITS OF UNPRECEDENTED SIZE, WHETHER IN REAL TERMS OR AS A PERCENTAGE OF OUR NATIONAL INCOME. THE CONSEQUENCES OF THAT FAILURE ARE COMING HOME TO US RIGHT NOW, AS HIGH INTEREST RATES THREATEN CONTINUED RECOVERY AND HUGE TRADE DEFICITS RESTRICT OPPORTUNITIES FOR AMERICAN BUSINESS AND JOBS, WHILE MAKING US OVERLY DEPENDENT ON FOREIGN CAPITAL. THIRTY-TWO STATES HAVE NOW PETITIONED CONGRESS FOR A CONSTITUTIONAL CONVENTION ON THE BALANCED BUDGET ISSUE, AND THERE IS A GOOD CHANCE THAT THE REQUISITE THIRTY-FOUR STATES WILL HAVE SUBMITTED PETITIONS BEFORE THE YEAR IS OUT.

RESPONSIBILITY TO MEET

GIVEN THE FISCAL SITUATION AND THE POPULAR DEMAND TO CHANGE THE RULES OF OUR BUDGET GAME, IT IS NECESSARY TO DEMONSTRATE THAT WE IN CONGRESS ARE RESPONSIVE TO THE PROBLEM. THAT IS WHY WE OUGHT TO FACE UP THIS YEAR TO THE ISSUE OF IMPOSING INSTITUTIONAL RESTRAINTS ON THE FEDERAL BUDGET. I UNDERSTAND THE SUBCOMMITTEE IS COMMITTED TO EXPEDITIOUS ACTION ON S.J. RES. 5, AND I AM CONFIDENT THE FULL COMMITTEE WILL FOLLOW SUIT.

AT THE SAME TIME AS WE CONSIDER HOW TO DEAL WITH THE LONG-TERM FISCAL PROBLEMS OF THE COUNTRY, WE CANNOT AFFORD TO LOSE SIGHT OF THE IMMEDIATE NEED TO PASS SUBSTANTIVE LEGISLATION TO REDUCE THE DEFICIT. IN THE FINANCE COMMITTEE WE ARE WORKING TO PUT TOGETHER A PACKAGE OF SPENDING AND REVENUE MEASURES THAT WILL ADVANCE US CLOSE TO THE PRESIDENT'S GOAL OF A \$100 BILLION DEFICIT DOWN PAYMENT--IF OTHER COMMITTEES FOLLOW SUIT, WE SHOULD BE ABLE TO MEET OR EXCEED THAT GOAL FAIRLY SOON. BUT EVEN IF WE DO, THE PROBLEM WILL REMAIN NEXT YEAR AND THE YEAR AFTER

UNTIL THE DEFICIT IS REALLY BROUGHT UNDER CONTROL. WE NEED FIRMER INSTITUTIONAL CONTROLS TO STRENGTHEN OUR BACKBONE, BUT WE ALSO NEED TO DEAL WITH THE POTENTIAL FISCAL CRISIS WE ARE FACING RIGHT NOW.

S.J. RES. 5

MR. CHAIRMAN, I CONTINUE TO BELIEVE THAT S.J. RES. 5 IS A GOOD AMENDMENT. IT IS SIMPLE, STRAIGHTFORWARD, AND STRIKES A CAREFUL BALANCE AMONG THE VARIOUS FISCAL RESTRAINT PROPOSALS THAT HAVE BEEN OFFERED. IN ADDITION, THE AMENDMENT ALLOWS CONGRESS FLEXIBILITY IN SETTING BUDGET POLICY. BY REQUIRING A THREE-FIFTHS VOTE TO ADOPT A DEFICIT BUDGET, AND A RECORD VOTE OF ALL MEMBERS TO INCREASE TAXES AS A PERCENT OF NATIONAL INCOME, S.J. RES. 5 SIMPLY ADJUSTS OUR PROCEDURES TO MAKE IT MORE LIKELY THAT DEFICITS AND THE TAX BURDEN WILL BE RESTRAINED. THAT IS A SENSIBLE APPROACH TO THE PROBLEM OF RESORTING TO THE CONSTITUTION TO ACHIEVE FISCAL REFORM, AND I SUPPORT IT.

AT THE SAME TIME, WE CERTAINLY HAVE AN OBLIGATION TO GIVE THIS ENTIRE ISSUE A FRESH LOOK. TWO YEARS HAVE PASSED SINCE THE SENATE APPROVED A COMPARABLE AMENDMENT, AND WE HAVE LEARNED ANEW SOME OF THE WEAKNESSES OF OUR BUDGETMAKING PROCEDURES. IT MAY BE THAT WE OUGHT TO CONSIDER EVEN MORE STRINGENT RULES TO GOVERN OUR BUDGET DECISIONS: EXPRESS LIMITS ON OUR RANGE OF OPTIONS IN THE INTEREST OF ACHIEVING FISCAL STABILITY OVER THE LONG HAUL. I HOPE THE WITNESSES AT THESE HEARINGS WILL SUGGEST WAYS TO IMPROVE AND STRENGTHEN THE AMENDMENT, AND I HOPE TO BE A PART OF THAT PROCESS. THIS IS AN ISSUE OF THE UTMOST IMPORTANCE, AND IF WE ARE PREPARED TO PROPOSE A CHANGE IN THE FUNDAMENTAL LAW OF THE LAND, WE HAVE TO DO THE JOB RIGHT.

AGAIN, MR. CHAIRMAN, LET ME EXPRESS MY GRATITUDE TO YOU FOR YOUR UNTIRING EFFORTS TO ADVANCE THE CAUSE OF FISCAL SANITY, AND FOR GIVING ME THE OPPORTUNITY TO ADDRESS THE SUBCOMMITTEE THIS MORNING. THE PUBLIC RIGHTLY DEMANDS FIRM RESTRAINTS ON SPENDING AND DEFICITS, AND I LOOK FORWARD TO THE TESTIMONY FROM TODAY'S WITNESSES ON HOW BEST TO REACH THAT GOAL.

Senator DOLE. I support this amendment. I want to congratulate Senator Hatch for this hearing and for other hearings he has held. I am not certain the amendment is perfectly worded; there might be some changes we could make.

But I really believe, after having been chairman of the Finance Committee for about 3 years, that we need some help. We need something to protect us from the special interest groups in this country, like a constitutional amendment.

It would seem to me that we may not have the will anymore to face up to reducing deficits. Everybody has got a plan that suits them, but we cannot seem to find a majority for real deficit reduction. Some say, well, I will not vote for any tax increases or I will not vote for anything unless you cut spending.

In the real world in this present day when you have a divided Congress—Speaker O'Neill has a 100-vote margin and President Reagan has the veto—everyone cannot have their way.

It would seem to me that perhaps we need something in the Constitution to help nudge us. Maybe some of us will not be around when this is finally ratified, but I sort of question whether or not the Congress has the will to really face up to deficit reductions.

We are playing around now with a little mandate and we cannot agree on that. I am not criticizing Democrats, Republicans, liberals, conservatives, or anybody. I hope that we have a Constitutional Convention, even though some have suggested they might abolish Congress while they were meeting. [Laughter.]

That would certainly stimulate some action around this place. If you gave us 30 days to come up with something or else, I think we would move very quickly.

I have a very good statement here, Mr. Chairman. I have already read it and rather than taking up time to read it, I think I will just put it in the record.

Senator HATCH. Without objection.

Senator DOLE. But I really believe that we have a responsibility that transcends any party loyalties, and I think we have bipartisan support for this effort. It may not be perfect, but I get a little tired, frankly, of hearing predictable witnesses tell me the same thing every time they come to my committee.

They start off telling you how bad the deficit is and two sentences later they want an increase in revenue sharing or more tax breaks. I went to a breakfast meeting this morning with the League of Cities people and they are decrying the deficit, but they want revenue sharing, no limit on industrial development bonds, and on and on and on it went.

I do not quarrel with those representatives, but if we had something to say—"well, I would sure like to help you out, but we have got this amendment now in the Constitution and I cannot do it"—I think it would really be helpful for Members of Congress in the next 10, 20 or 30 years.

In the meantime, we are going to do the best we can to deal with what we have, and if you could help on that, we would really appreciate it.

Senator HATCH. I really appreciate the comments of both of my colleagues here today, in addition to Senator Thurmond. Senator Dole is chairman of the major revenue committee in the Congress. I happen to be chairman of, I believe, the largest authorizing committee with jurisdiction.

I am happy we are together on this issue because I really believe something has to be done. I have learned a lot here this morning. Of course, I do study your materials, Carol, and let us work on that one thought you have. That is a very pregnant thought, I believe, and one we ought to all spend some time on.

Well, thank you for appearing. We will submit further questions. We will keep the record open, but would like to have the questions submitted by the end of today. We would also like to have the answers hopefully before the end of the 7-day period.

We have additional witnesses. I would like to call Mr. Langdon Flowers of the National Association of Manufacturers and Ms. Althea Simmons of the National Association for the Advancement of Colored People.

STATEMENT OF LANGDON FLOWERS, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. FLOWERS. Mr. Chairman, I would like to request that the full text as submitted—

Senator HATCH. Without objection, we will put your full statement in the record.

Mr. FLOWERS. I am Langdon Flowers, chairman of the Board of Flowers Industries, Inc. I am here today on behalf of the National Association of Manufacturers. NAM is a voluntary business association of over 13,000 corporations, large and small, located in every State, and members range in size from the very large to over 9,000 smaller manufacturing firms, each with an employee base of less than 500.

NAM members companies employ 85 percent of all workers in manufacturing, and produce over 80 percent of the Nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its associations council and the National Industrial Council.

The issue before us today, the need for a constitutional amendment requiring a balanced Federal budget and a limitation on the growth of spending and taxation, is of very grave importance to this Nation.

We have reached a point in our economic history that even the most pessimistic of our forefathers could never have imagined. On February 10, 1984, NAM's board of directors unanimously passed a deficit resolution that I believe you will find useful both for its de-

scription of the scope of our current deficit problem and for the substantive recommendations it includes that can assist in bringing the problem back under control. I have attached a copy of this for the record.

However, I would like to highlight a few of the comments for you now. Specifically, it states, and I quote:

The size of the federal deficit is the most crucial economic problem facing our nation today. Over the past two decades, federal expenditures have risen much faster than either economic growth or tax receipts.

More significantly, the federal deficits now being projected will add so much to the national debt that our ability to service such debt will be questionable, so that annual increases in the deficit become self-perpetuating. We must avoid saddling future generations with a debt so large that the dominant government expenditure becomes that of interest payments. Therefore, it is essential that we reduce federal deficits as expeditiously as possible.

This resolution proceeds to recommend, among other policy and procedural changes, reductions in the growth of Federal spending across the board, including reducing the indexing formula for entitlement programs to substantially less than the increases in the Consumer Price Index; enactment of cost savings similar to those included in the Grace Commission study; development of a solution to address the medicare situation, relying on cost containment rather than tax increases; and specifically of interest to this panel, adoption of a balanced budget amendment to the Federal Constitution.

Now, we could spend a lot of time today discussing who is at fault and how we reached this unbelievable situation. However, that would serve no useful purpose. Rather, we need to discuss and develop a way out of this maze of endless red ink and return to a more sane pattern of spending policies.

An amendment to the Constitution requiring a balanced Federal budget could accomplish just that. Many people agree that our current economic situation is intolerable, and yet they disagree that a constitutional amendment is the appropriate solution.

I agree that amending the Constitution should not be taken lightly or without great forethought. However, a review of the inherent bias toward spending that is built into our current system and the failure of past congressional statutory efforts will illuminate the need for the constitutional approach.

As most of you have noted in your past statements, there is a strong bias toward increased levels of spending within our current political system, which result in growing deficits or higher tax rates.

While a Member of Congress may derive many political advantages from supporting new and larger spending measures and programs, there is little or no political advantage to opposing them. And when considered program by program, relatively large subsidies are granted to a few beneficiaries, with small additional cost to each individual taxpayer.

As the beneficiaries have a large stake in the continuation of the program, they generally are very vocal and communicate regularly with their elected officials. On the other hand, when the cost of each program is considered separately by each taxpayer, the amount does not seem significant enough to even warrant the time it takes to write and mail a letter.

It is only when the spending for all these programs is considered in the aggregate that the magnitude of the individual stake in reform becomes apparent.

Congress has tried to address this bias in the past through statutory changes in the laws. Senator Grassley can perhaps best attest to the ineffectiveness of these attempts. He cosponsored, with former Senator Harry F. Byrd, Jr., a provision enacted in October of 1978 which banned deficits in fiscal year 1981 and thereafter.

I would like to add the sentiments of Senator Byrd to those that have previously been expressed by Senator Grassley regarding the effectiveness of this provision, and I quote:

Some would seek to accomplish this—establishing a firm legal commitment to a balanced budget and a ceiling on Federal expenditures—by a simple statute; that is, by passing a bill rather than amending the Constitution.

I have had some experience with that, and to advocates of this approach I can only say good luck. I was the sponsor of a provision enacted in October of 1978 which banned deficits in fiscal year 1981 and thereafter. It was passed by an overwhelming majority in both the Senate and the House. It was signed into law by President Carter.

That law has simply been ignored. Congress, in effect, has violated its own law, so I think that dramatizes the need for a constitutional amendment.

In the past, many Members had hoped that the Congressional Budget and Impoundment Control Act of 1974 would serve as an effective mechanism to reduce Federal spending. However, a balanced Federal budget is still an illusion. With the current history of deficits and spending excesses, the inherent bias within our system to continue such practices, and the ineffective attempts to address these problems through statutory revisions, a constitutional amendment requiring a balanced budget is our most viable option.

Once one accepts that a constitutional amendment is the most appropriate vehicle, it is then necessary to determine the most appropriate language for the amendment. I know that members of this subcommittee have been developing and finetuning such language since at least 1979.

In 1982, your efforts were rewarded by the Senate's adoption of Senate Joint Resolution 58, the tax limitation and balanced budget amendment. Regrettably, the companion bill in the House of Representatives, House Joint Resolution 350, failed to achieve the required two-thirds majority vote.

Despite the defeat in the House, however, I believe the basic concepts included in Senate Joint Resolution 58 and, in this Congress, Senate Joint Resolution 5, provide the flexibility and the restraint essential to enforce a constitutional amendment.

The National Association of Manufacturers supports the provisions of these bills and encourages this subcommittee to favorably report legislation similar to Senate Joint Resolution 58 and Senate Joint Resolution 5 to the full Senate Judiciary Committee for their immediate consideration.

NAM was active in gaining Senate and House support for the balanced budget amendment in the 97th Congress, and we intend to devote even more time and energy to these activities this year.

On March 19, 1982, NAM's board of directors approved this policy objective in a congressional spending limit resolution which stated, and I quote:

The National Association of Manufacturers believes that a Federal spending limitation is needed in order to balance the budget. The NAM supports the broad concept of a constitutional amendment effectively limiting Government spending, such as Senate Joint Resolution 58.

Responsible Members of the House of Representatives are looking to this subcommittee, and ultimately the entire Senate, for the impetus and proof that the people of this country want their representatives to adopt and live within a balanced budget. They need this to overcome the obstacles that have been developed by those who do not wish to change their excessive spending habits or those whose popularity depends on the continuation of ever-increasing funds for local projects.

The limited number of legislative days remaining in the second session of the 98th Congress do not provide as much time as we might hope for. However, constituents in 32 States have endorsed a constitutional convention to consider a balanced budget amendment.

The President stated his support for the balanced budget amendment when he said in his fiscal 1985 budget message, and I quote:

Let us heed the people and finally support a constitutional amendment mandating balanced Federal budgets and spending limits. I encourage our citizens to keep working for this at the grassroots. If you want to make it happen, it will happen.

With a concentrated, united effort, I believe we can get Congress to adopt this bill before the 98th Congress adjourns for the elections.

I appreciate very much the opportunity you have given me to appear before this subcommittee to present our views on this important issue, and I pledge NAM's continued support to your efforts. If we are successful, I also pledge our continued commitment to ensure that Congress then proceeds to live within its constitutional mandate for a balanced budget.

Thank you. I welcome any questions.

[The following was received for the record:]

PREPARED STATEMENT OF LANGDON FLOWERS

I am Langdon Flowers, Chairman of Flowers Industries, Incorporated. I am here today on behalf of the National Association of Manufacturers. NAM is a voluntary business association of over 13,000 corporations, large and small, located in every state. Members range in size from the very large to over 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85 percent of all workers in manufacturing and produce over 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

The issue before you today, the need for a constitutional amendment requiring a balanced federal budget and a limitation on the growth of spending and taxation, is of grave importance to this Nation. We have reached a point in our economic history that even the most pessimistic of our forefathers could never have imagined. Consider with me the following:

- o The total public debt at the end of FY 1983 was a staggering \$1.4 trillion. However, estimates from the President's Budget have the debt rising even higher to \$1.8 trillion for FY 1985.
- o CBO projects that, under current spending and taxing policies, the federal budget deficit will grow from \$189 billion in FY 1984 to over \$300 billion by FY 1989.
- o Federal budget outlays have risen from 19.4 percent of GNP in FY 1974 to an estimated 24.0 percent of GNP for FY 1984.

- o According to the President's FY 1985 Budget, current estimates indicate that constant dollar debt service costs in 1984 will be triple 1971 levels and that the GNP share will reach 3.0 percent, or more than double its 1971 claim.

On February 10, 1984, NAM's Board of Directors unanimously passed a Deficit Resolution that I believe you will find useful both for its description of the scope of our current deficit problem and for the substantive recommendations it includes that can assist in bringing the problem back under control. I have attached a copy of this resolution for the record. However, I would like to highlight a few of the comments for you now. Specifically, it states:

The size of the federal deficit is the most crucial economic problem facing our nation today. Over the past two decades, federal expenditures have risen much faster than either economic growth or tax receipts...More significantly, the federal deficits now being projected will add so much to the national debt that our ability to service such debt will be questionable, so that annual increases in the deficit become self-perpetuating. We must avoid saddling future generations with a debt so large that the dominant government expenditure becomes that of interest payments. Therefore, it is essential that we reduce federal deficits as expeditiously as possible.

The resolution proceeds to recommend, among other policy and procedural changes, reductions in the growth of federal spending across the board, including reducing the indexing formula for entitlement programs to substantially less than the increases in the consumer price index; enactment of cost savings similar to those included in the Grace Commission's study; development of a solution to address the Medicare situation relying on cost containment rather than tax increases; and, specifically of interest to this panel, adoption of a balanced budget amendment to the federal constitution.

We could spend a lot of time today discussing who is at fault and how we have reached this unbelievable situation. However, that would serve no useful purpose. Rather, we need to discuss and develop a way out of this maze of endless red ink and return to a more sane pattern of spending policies. An amendment to the Constitution requiring a balanced federal budget could accomplish just that.

Many people agree that our current economic situation is intolerable, and yet they disagree that a constitutional amendment is the appropriate solution. I agree that amending the Constitution should not be taken lightly or without great forethought. However, a review of the inherent bias towards spending that is built into our current system and the failure of past congressional statutory efforts will illuminate the need for a constitutional approach.

As most of you have noted in your past statements, there is a strong bias towards increased levels of spending within our current political system which results in growing deficits or higher tax rates. While a Member of Congress may derive many political advantages from supporting new and larger spending programs, there is little or no political advantage to opposing them. When considered program by program, relatively large subsidies are granted to a few beneficiaries with small additional cost to each individual taxpayer. As the beneficiaries have a large stake in the continuation of the program, they generally are very vocal and communicate regularly with their elected officials. On the other hand, when the cost of each program is considered separately by each taxpayer, the amount does not seem significant enough to warrant the time it takes to write and mail a letter. It is

only when the spending for all these programs is considered in the aggregate does the magnitude of the individual's stake in reform become apparent.

Congress has tried to address this bias in the past through statutory changes in the law. Senator Grassley can perhaps best attest to the ineffectiveness of these attempts. He cosponsored, with former Senator Harry F. Byrd, Jr., a provision enacted in October of 1978 which banned deficits in fiscal year 1981 and thereafter. I would like to add the sentiments of Senator Byrd to those that have previously been expressed by Senator Grassley regarding the effectiveness of this provision:

"Some would seek to accomplish this (establishing a firm legal commitment to a balanced budget and a ceiling on federal expenditures) by simple statute--that is, by passing a bill rather than amending the Constitution. I have had some experience with that, and to advocates of this approach, I can only say, 'Good Luck.' I was the sponsor of a provision enacted in October of 1978 which banned deficits in fiscal year 1981 and thereafter. It was passed by an overwhelmingly majority in both the Senate and the House. It was signed into law by President Carter. That law has simply been ignored. Congress, in effect, has violated its own law. So I think that dramatizes the need for a constitutional amendment."

In the past, many Members had hoped that the Congressional Budget and Impoundment Control Act of 1974 would serve as an effective mechanism to reduce federal spending. However, a balanced federal budget is still an illusion. Perhaps Senator David Boren from Oklahoma best summed up the frustration created by these failed statutory attempts to achieve budget balance when he appeared before your Committee on March 11, 1981 and said:

"...I wish I could still believe, as I once did, that we could restrain ourselves--that is, that we in the Congress recognizing the wisdom of a balanced budget, would voluntarily achieve that end.

But I am afraid that our experience of last year severely dims that hope. There could have been no stronger

sentiment in the Halls of Congress than the sentiment to balance the budget that was present at the beginning of the last Session of the Congress. Determination was great and predictions were consistent that 'this year', finally, a balanced budget would be achieved and, in fact, the First Concurrent Budget Resolution did produce a paper balance. But it was only a paper balance and we knew it at the time. It was easy and politically expedient as the spring gave way to summer to say that changing economic conditions made it impossible to honor the balanced budget pledge. Certainly, changing economic conditions did make it difficult and perhaps it was impossible to avoid a small deficit. However, Mr. Chairman, changing economic conditions did not dictate a 60 billion dollar deficit...The unfortunate truth is that once the psychological barrier was broken, the general attitude seemed to be, well, there's going to be a deficit anyway, so this little extra bit shouldn't hurt too much.

In light of all these factors, I believe the pressure for a Constitutional Amendment such as proposed in this Joint Resolution is greater and more appropriate than before."

With the current history of deficits and spending excesses, the inherent bias within our system to continue such practices and the ineffective attempts to address these problems through statutory revisions, a constitutional amendment requiring a balanced budget is our most viable option.

Once one accepts that a constitutional amendment is the most appropriate vehicle, it is then necessary to determine the most appropriate language for the amendment. I know that Members of this Subcommittee have been developing and finetuning such language since at least 1979. In 1982, your efforts were rewarded by the Senate's adoption of S.J.Res. 58, the Tax Limitation and Balanced Budget Amendment. Regrettably, the companion bill in the House of Representatives, H.J.Res. 350 failed to achieve the required two-thirds majority vote.

Despite the defeat in the House, however, I believe that the basic concepts included in S.J.Res. 58 and, in this Congress, S.J.Res. 5, provide the flexibility and restraint essential to enforce a constitutional amendment.

Section 1 provides:

- o A requirement that Congress adopt a statement of receipts and outlays for a year in which total outlays are not greater than total receipts.
- o An ability for Congress to amend such statement at any time, providing such revised statement provides revised outlays that are no greater than revised receipts.
- o The ability for Congress to provide for a specific excess of outlays over receipts in the budget statement whenever three-fifths of the whole number of both Houses deem it necessary by a vote directed solely to that subject.
- o The authority for Congress and the President to ensure that actual outlays do not exceed the outlays set forth in the budget statement.

This section establishes that the Federal budget should be balanced. It requires Congress to adopt a budget of planned receipts and outlays prior to each fiscal year in which the planned outlays do not exceed planned receipts. Congress may adopt an amended statement of receipts and outlays at any time so long as the outlays do not exceed receipts. Congress does have the flexibility to adopt a statement containing a specific level of deficit. However, by recorded vote, three-fifths of the Members of each House of Congress must adopt the deficit statement. This section also mandates that actual federal outlays may not exceed the planned level of outlays as set forth in the statement. Both Congress and the President would have continuing responsibilities to ensure that this limit is not breached. Actual receipts, on the other hand, may fall

below planned receipts without requiring congressional or Executive action. For example, if an unanticipated recession caused revenues to fall below expectations, no action would be required by either Congress or the President.

Section 2 provides:

- o A restriction that total receipts for any fiscal year set forth in the budget statement shall not increase by a rate greater than the rate of increase in national income during a specified period of time unless a majority of the whole number of both Houses of Congress pass a bill directed solely to approving the additional receipts and that bill becomes law.

Section 2 establishes that federal receipts should grow no more rapidly than the growth of the economy from which they are derived. The balanced budget in Section 1 should not be balanced at levels of receipts and outlays that consume an increasing proportion of the national economy. If, in its judgment, circumstances warrant, the Congress may permit a more rapid growth in receipts only by a recorded vote of a majority of the membership of both Houses to modify existing statutes to generate additional tax receipts.

Sections 1 and 2, in conjunction, establish a linkage between the growth of the economy and the growth of federal outlays as well. Since receipts cannot grow faster than the economy and outlays cannot exceed receipts, this amendment would establish, as a fiscal norm, that federal outlays cannot grow faster than the economy.

Section 3 provides:

- o An ability to waive the provisions of the amendment during any fiscal year in which a declaration of war is in effect.

Section 4 provides:

- o Definitions of total receipts and total outlays.

This Section clarifies the intent of the amendment to define receipts and outlays in the broadest possible manner. The exceptions mentioned are consistent with traditional budget and accounting procedures. Of great importance to NAM is the inclusion of off-budget spending in the statement of outlays. NAM has been a consistent advocate of bringing off-budget spending on budget as part of standard federal budgeting procedures.

Section 5 provides:

- o An effective date for implementation of the amendment following the necessary ratification procedures.

This establishes as the effective date of this amendment the second fiscal year beginning after its ratification. The requirements of this amendment would, in their entirety, be applicable to such fiscal year.

Section 6 provides:

- o Enforcement and implementation of the amendment by Congress.

NAM supports these provisions and encourages this Subcommittee to favorably report legislation similar to S.J.Res. 58 and S.J.Res. 5 to the full Senate Judiciary Committee for their immediate consideration. NAM was active in gaining Senate and House support for the balanced budget amendment in the 97th Congress and we intend to devote even more time and energy to these activities this year. On March 19, 1982, NAM's Board of Directors approved this policy objective in a Congressional Spending Limit Resolution which stated:

"The National Association of Manufacturers believes that a federal spending limitation is needed in order to balance the budget. The NAM supports the broad concept of a constitutional amendment effectively limiting government spending, such as Senate Joint Resolution 58."

Responsible Members of the House of Representatives are looking to this Subcommittee and ultimately the entire Senate for the impetus and proof that the people of this country want their representatives to adopt and live within a balanced budget. They need this to overcome the obstacles that have been developed by those who do not wish to change their excessive spending habits or those whose popularity depends on the continuation of ever increasing funds for local projects.

The limited number of legislative days remaining in the Second Session of the 98th Congress do not provide as much time as we might hope for. However, constituents in 32 states have endorsed a constitutional convention to consider a balanced budget amendment. The President reiterated his support for the balanced budget amendment when he stated in his FY 1985 Budget Message:

"Let us also heed the people and finally support a constitutional amendment mandating balanced Federal budgets and spending limits. I encourage our citizens to keep working for this at the grassroots. If you want to make it happen, it will happen."

With a concentrated, united effort, I believe we can get Congress to adopt this bill before the 98th Congress adjourns for the elections.

I appreciate the opportunity you have given me to appear before this Subcommittee to present our views on this important issue. I pledge NAM's continued support to your efforts. If we are successful, I also pledge our continued commitment to ensure that Congress then proceeds to live within its constitutional mandate for a balanced budget.

Thank you. I welcome any questions you may have at this time.

NATIONAL ASSOCIATION OF MANUFACTURERS

BOARD OF DIRECTORS

Deficit Resolution

The size of the federal deficit is the most crucial economic problem facing our nation today. Over the past two decades, federal expenditures have risen much faster than either economic growth or tax receipts, with spending rising from 19 percent to 24 percent of GNP. The result has been an ominous increase in federal deficits that cannot be ignored. Unless these deficits are reduced, interest rates will remain too high for healthy economic growth, the dollar will continue to be overvalued, and the potential for a major acceleration of inflation will exist. Such a situation will perpetuate the difficulties currently faced by many U.S. industries in competing in world markets, which difficulties have resulted in record, growing trade deficits. More significantly, the federal deficits now being projected will add so much to the national debt that our ability to service such debt will be questionable, so that annual increases in the deficit become self-perpetuating. We must avoid saddling future generations with a debt so large that the dominant government expenditure becomes that of interest payments. Therefore, it is essential that we reduce federal deficits as expeditiously as possible.

The key to lowering deficits must be reductions in the growth of federal spending across the board. No new entitlement programs should be created and the growth of all existing indexed entitlement programs, including Social Security and all government pensions, must be curtailed by reducing the indexing formula to substantially less than the increase in the consumer price index. Cost savings, for example those recommended by the Grace Commission, should be implemented at every available opportunity. It is essential that major efficiencies be achieved in the defense area. Finally, a solution to the difficult Medicare situation must be found soon and must rely on cost containment rather than tax increases.

It eventually may be necessary that deficit reductions be accomplished through a package combining spending reductions with revenue increases. Here, great caution must be exercised to ensure that promised reductions in spending are in fact real and fulfilled. Any deficit reduction package must be structured so that, on a year by year basis, no tax increase will go into effect until there has been an objective certification that planned spending cuts of an even greater dollar magnitude have already been implemented.

It is also clear that procedural improvements in the overall Congressional budgeting process are needed to ensure greater fiscal discipline. In addition to the previously mentioned certification that spending cuts have been implemented, other possibilities include more effective reconciliation enforcement techniques, imposition of binding limitations on federal credit activity, establishment of a statutory ceiling on federal expenditures as a percentage of GNP, and adoption of a balanced budget amendment to the federal constitution.

On the revenue side, care must be taken in the design of any proposed tax changes. Any increase in revenues should not take the form of patchwork changes that further complicate the tax laws and add to the tax burden on savings and investment. The present system is excessively complex, allows many to escape taxation, and tends to favor consumption at the expense of savings and investment. While the latter imbalance was in part redressed by the important capital formation incentives of the Economic Recovery Tax Act of 1981, these incentives have already been substantially diluted by the enactment of major business tax increases in 1982, and should not be further eroded.

The need for structural tax reform could be served by a consumption-based tax, which also offers the best balance between the need to retain incentives for savings and investment and any perceived need for additional federal revenues. Such a tax ultimately could replace--at least in part--the present system which, in addition to placing excessive reliance on the taxation of both corporate and individual income, is unreasonably complicated and often results in widely disparate treatment of taxpayers. Any net revenue increase from implementation of a consumption-based tax should be temporary and dedicated solely to deficit reduction.

A satisfactory resolution of the deficit problem can only be achieved if Congress and the Administration work together in a bipartisan manner, with each side making concessions. Major spending cuts combined with the simplification and restructuring of the nation's revenue laws could, given appropriate safeguards as outlined above, garner widespread support. If this can be done, the prospects for long-term economic prosperity for all Americans will be greatly enhanced.

Adopted unanimously by the
NAM Board of Directors
February 10, 1984

Senator HATCH. Well, thank you, Mr. Flowers. I would like to thank you, NAM, and Janise Moore, who is seated next to you, for the outstanding work you have done in the past and present on behalf of Senate Joint Resolution 5 and its predecessor. We feel you have really backed the amendment, which has done an awful lot of good in helping it pass through the U.S. Senate.

We just want to express our personal appreciation. We know how difficult this issue is and how difficult it must be for organizations like yours to make a decision on these types of issues. Thank you for being here.

Do you have any questions?

Senator DOLE. No.

Senator HATCH. Well, we will be happy to excuse you, then. We appreciate having your statement in the record.

Ms. Simmons, we will turn to you. You will be our last witness this morning. We will have to see what happens after that point. We are glad to welcome you to the committee and always look forward to hearing you testify.

STATEMENT OF ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Ms. SIMMONS. Thank you so much, Mr. Chairman. I am Althea T.L. Simmons, director of the Washington Bureau of the NAACP, the Nation's oldest civil rights organization now celebrating its 75th anniversary.

The NAACP is, Mr. Chairman, as you know, and has been unalterably opposed to a balanced budget constitutional amendment, a 27th amendment to the Constitution, in any form. Our two basic reasons are these: one, the integrity of the Constitution; and, second, the economic policy implications of such an amendment.

To put it simply, we believe that balanced budget amendments are both dangerous and unnecessary; dangerous because of the strictures that would be placed on economic policy and the effect of putting economic policy into the Constitution.

We think they are unnecessary because the Congress and the President have all the power necessary to balance the Federal budget, if that is indeed the consensus.

Aside from the political atmosphere in which this action is being considered, there is the effect of the actual amendment being proposed. The NAACP is consciously aware of constitutional rights. The amendments to the Constitution which have been ratified have for the most part, clarified and extended individual rights. There are, of course some few exceptions, such as the twenty-fifth amendment concerning Presidential succession, but even there, the amendment corrects an agreed-upon deficiency in the original succession process established by the Framers.

The Constitution is a document that guarantees fundamental rights and freedoms and provides for the operation of the Government.

The Constitution, in both its text and amendments, avoids the definition of national policy except as necessary to protect the individual rights of citizens. Indeed, we believe that this is its greatest strength.

In the one instance where policy was made part of the Constitution—the 18th amendment concerning alcoholic beverages—a fiasco was made of the document and the amendment was repealed.

Economic policy has no place in the Constitution which provides a structure and process for the determination of that policy. The Constitution should not embody a specific budgetary approach which might be popular today but prove inappropriate in later years.

All of us are concerned about the unconscionable deficits, but that balanced budgets are viewed by some today as a panacea to solve our economic woes does not mean that view will not change to that of past administrations and economists to the effect that some budget deficits are indeed beneficial to stimulate economic growth in certain discrete circumstances.

We do not believe that the Constitution should be amended unnecessarily when Congress already has the ability to achieve the ends sought by this amendment. Mr. Chairman, I have faith in the Congress. I believe the Congress has the political will to face up to its responsibility without a balanced budget amendment.

Congress correctly rejected identical balanced budget amendments in 1982. The House, in a bipartisan effort, and just prior to the elections, voted down such a proposed constitutional amendment. The issues were fully aired and they were soundly rejected.

The NAACP maintains that the economic policy the proposed amendments would mandate would not be in the best interests of our Nation. It would not provide the Congress and the President with the discretion to combat recessions. Under the requirement that the budget be in continuous balance, a recession could quickly become a depression on the scale we experienced in the 1930's.

We believe it is dangerous economic policy to insist that a continuous balance be maintained under all circumstances, boom or recession. This amendment would remove all discretion for economic policy at an extreme cost to rational government. A study done by the Council of Economic Advisers in 1979 showed that if the Federal budget had been balanced during the 1974-75 recession, in 1975 real GNP would have declined 12 percent instead of 2.5 percent, and unemployment would have risen to 12 percent instead of 8.5 percent.

We believe that the resolutions currently before you would prohibit the very antirecession activities being undertaken. We think they would limit the Federal Government's ability to respond rapidly, to an international crisis as well, since this amendment would permit a waiver only when a war is declared. We have had instances where there were no declared wars, but we have been actively involved.

The need for flexibility to obtain a quick approval of necessary appropriations is evident almost daily as international events unfold. For example, the institution of a grain embargo, the possibility of other sanctions, and the likelihood of increased oil prices all demonstrate the need to have flexibility. I recall very vividly the food stamp caps that we have had from year to year and the depletion of allocated funds about midyear which necessitated action to remove the cap.

In addition to our objections to the concept of a balanced budget constitutional amendment, we find serious problems with the resolutions currently before you for consideration because we think that if you pass either one of these, you would have to almost institute what we would call creative accounting methods to circumvent their provisions.

The proposed amendment would require a super-majority vote, and we question whether or not you want to have a super-majority vote in this instance. It is quite likely that our judicial branch would have to become very involved in the budget and appropriations process if these amendments are adopted.

We can expect yearly challenges to appropriations and attempts to lower and increase taxes by interested persons and institutions who claim that the Congress and the President failed to comply with the amendment.

Finally, Mr. Chairman and members of the committee, the NAACP views this and all constitutional amendments to balance the budget as a threat to the poor because it would endanger Federal funding of social and other programs designed to aid the poor, minorities, and distressed areas of our Nation. These very programs are already under attack and have been drastically reduced in ways that are threatening the very survival of the poor in America. The NAACP is confident that a balanced budget amendment would force further cutbacks in these vital areas.

The black community tends to think that the Constitution serves as a special protection for those of us who have been discriminated against over a long period of time. But because this is such drastic action, we would urge this committee and the Congress to consider this carefully and to reject these resolutions because we do believe that the Members of the Congress have the political will to take the actions necessary without resorting to a balanced budget amendment to the Constitution.

Mr. Chairman, we certainly appreciate this opportunity to present our views, and hope that you will consider our views very carefully. Thank you very much.

Senator HATCH. Thank you, Ms. Simmons. You have been very articulate in your views and we appreciate having them in front of this committee here this morning. Thank you for being here.

Senator Dole, do you have any questions?

Senator DOLE. No, I do not have any questions. I appreciate the statement. Your concern about the poor—certainly, I do not quarrel with that. I am really more concerned about the programs that affect low income Americans when I look at the ever increasing interest on the national debt.

The fastest growing entitlement program in this town is interest on the debt. Right now, the debt is \$1.4 trillion; our interest pay-

ment is about \$140 billion. We are told by the experts that if we do not slow down the growth of spending and make some tax changes, the debt is going to be \$2.5 trillion by 1990 and the interest is going to be \$250 billion a year.

Now, who is going to make the interest payments? Which programs are going to be cut back? You have to pay the interest on the debt. We do not have to do other things, but we have to pay the interest. It would seem to me that that is even a greater threat than some people suggest this amendment might be.

I am not certain there is the will in Congress to attack the deficit anymore. Everyone is willing to make a speech about the deficit, but they are not willing to vote to reduce spending and make certain tax changes; I think it takes a combination.

This may help us, but certainly I, for one, would not want to suggest that this amendment would in any way endanger programs that affect the vulnerable groups in this country, whether they are low income Americans, handicapped or senior citizens.

That is certainly not my reason for supporting it. If I thought it would have that impact, I would not be a supporter and I am certain neither would Senator Hatch.

Senator HATCH. That is the way I feel. I really believe, Ms. Simmons, that unless we get spending under control, the poor are going to be the most hard hit of all. Like Senator Dole has said, we have a present Federal budget of which 78 percent is what we call uncontrollable. That is because Congress will not do anything to control it.

The only one true uncontrollable in that whole budget as Senator Dole has aptly brought out, is the interest against the national debt. That is the only thing we cannot control or do anything about, except by reducing the national debt.

Senator Dole has made a very important point, and that is why I hope you will continue to debate this within your organization. I believe if we want to help the poor, one of the best things we can do is get this Federal Government under control. We must get it to quit spending us blind.

Frankly, in the end, the poor will be much better off because we will not have these runaway costs and expenditures we presently have. The only way I see getting it under control is through a balanced budget constitutional amendment.

We have written this amendment in the form of a balanced budget/tax limitation amendment, so that we will watch what we are doing and do what is right here in the Congress. That is something they are not doing and have not done for the last 52 years, in my opinion, except for about 6 of those years.

We appreciate your comments for you have raised some very noble and important concerns here today. We just want you to know we are glad you have taken time to appear before this committee. Thank you so much.

I understand we have one other witness from the National Education Association here. If we could, we are going to put your complete statement into the record.

If you could summarize, it would help a tremendous time conflict I have. I thought we would be through by 11:30. However, I do want to accommodate you.

Let me mention that the Chamber of Commerce, the National Association of Realtors, and the American Farm Bureau Federation all have submitted statements in support of Senate Joint Resolution 5, while the American Federation of State, County and Municipal Employees has submitted an opposing statement.

We will put those statements in the appendix, and will conclude our hearing today by taking your testimony at this time. If you can summarize, I would be very grateful to you.

STATEMENT OF LINDA TARR-WHELAN, DIRECTOR, GOVERNMENT RELATIONS, NATIONAL EDUCATION ASSOCIATION

Ms. TARR-WHELAN. Thank you very much, Senator Hatch, for hearing our testimony this morning, and I will certainly summarize it as quickly as possible.

My name is Linda Tarr-Whelan and I am the director of Government relations for the National Education Association. Our 1.7 million members are the Nation's school teachers, educational support personnel, and higher education faculty.

We are pleased to have an opportunity to present our views today on both Senate Joint Resolution 22 and Senate Joint Resolution 5, the proposed amendments to the U.S. Constitution requiring a balanced Federal budget.

We oppose both of those amendments, and we would oppose any other measure imposing constitutional restrictions on Federal budgetmaking, which we consider to be an economic policy process.

We oppose those measures on two important bases: one, that we do not believe they will do anything to help us out of the current budget crisis and, concomitantly, would do nothing to bring about growth and long-term health to our economy.

Second, we believe that a balanced budget amendment would remove economic policy and decisionmaking from the hands of the people through their elected officials and give it to the courts.

Specifically, we have a few points that we would like to mention that may be unusual compared to other witnesses before you. First of all, we are very concerned that a balanced budget amendment would jeopardize the future of many Federal programs aimed at helping the economically disadvantaged, particularly in the field of education.

We have been quite the victims of budget-cutting fever on Capitol Hill in the last few years, and feel that this amendment, if it were in place, would increase that.

We also believe, Mr. Chairman, that the constitutional authority to balance the budget clearly exists already. In fact, the President made a campaign promise in 1980 to achieve a balanced budget. It is within his power as the President of the United States to submit such a budget to Congress, and within Congress' power to adopt a budget that is balanced, regardless of whether it has come from the administration in a balanced fashion.

We believe that if a constitutional amendment were to pass, the social programs would bear the brunt of the cuts. You yourself and Senator Doe mentioned the fact that much of the current Federal budget—approximately 670 billion of the 928 billion current services budget—are areas which represent a contract between the

Government and the American people and would be programs which would be very difficult to cut.

That would leave defense spending of a somewhat discretionary type of \$173 billion; \$83 billion in nondefense discretionary spending. Currently, this year we have a deficit of approximately \$200 billion. Therefore, wiping out all the moneys for the discretionary social programs would not even erase half of the current year deficit.

We believe, Mr. Chairman, that economic recoveries could be impeded if a balanced budget amendment were in place. We need only review the last few years of the recession from which we are now surfacing. A balanced budget requirement would have forced our economy into a far more severe downturn and the Government would have been very hard pressed to respond quickly with programs to counter the recession's impact on people, such as unemployment, welfare programs, and the like.

We believe, also, that the Congress' authority to deal with defense matters would be hampered by the two resolutions, and I am really speaking particularly about authority to deal with a national defense crisis absent a declaration of war. We believe that Congress has utilized this authority in the last few years to make major decisions with regard to the impact of spending on the defense budget itself.

We also believe, finally, that a balanced budget amendment would be basically unworkable. The terms "receipts" and "outlays" are not specifically defined, and this committee at various times in the past has heard considerable expert testimony about the differences in which those terms could be held.

The estimates that have been used in the budget process on outlays and revenues have provided drastically incorrect, regardless of whether they have been estimates from the administration or from the Congress, and that would require the budget to be revised multiple times per year to reflect changing and updated estimates of spending and taxation.

With the possibility of constant revision of the budget, recipients of Federal moneys, such as local school districts, would be unable to effectively and efficiently plan for and carry out their particular programs.

Therefore, Mr. Chairman, for the reasons that I have identified, the National Education Association believes that it would be inappropriate to legislate either of these resolutions to add a constitutional amendment for a balanced budget.

We believe that the appropriate response to our economic condition lies not in gimmicks for the Constitution, but for the Congress and the administration to undertake the kinds of constructive policies which would provide long-term economic health and growth.

We stand ready to work with you in promoting such policies, and appreciate the opportunity to testify today.

[The prepared statement follows:]

PREPARED STATEMENT OF LINDA TARR-WHELAN

Mr. Chairman and Members of the Committee:

My name is Linda Tarr-Whelan. I am Director of Government Relations for the National Education Association (NEA), whose 1.7 million members are this nation's public school teachers, educational support personnel, and higher education faculty.

NEA is pleased today to have this opportunity to present our views on S.J. Res. 22 and S.J. Res. 5, both proposing amendments to the Constitution requiring a balanced federal budget.

The NEA opposes both these amendments, as it would oppose any other measure that would impose such constitutional restrictions on federal budget-making--an economic policy process. The 7,000 delegates to NEA's 1983 Representative Assembly adopted as part of the Legislative Program for the 98th Congress language opposing "any effort to amend the Constitution respecting tax limitations or the federal budget..." (see attachment).

NEA has long stood in opposition to such measures on constitutional and economic grounds. A balanced budget amendment would do nothing to help us out of our current budget crisis since it would not take effect for several years. In addition, it would do nothing to increase our nation's productivity - clearly an essential ingredient to any recipe for the long-term economic health.

A balanced budget amendment would remove economic policy and decision-making from the hands of the people through their elected Representatives and give it the courts. It would jeopardize the future of many federal programs aimed at helping the economically disadvantaged. In particular, we at NEA fear that education programs

such as Chapter 1, Bilingual Education, Handicapped Education, and Vocational Education, which have already seen their time on the chopping block during these past several years of "budget-cutting fever" on Capitol Hill, would again be victimized.

Moreover, a constitutional amendment to balance the federal budget would unnecessarily tie the hands of our lawmakers in times of national economic distress or at times of military emergencies.

Such an amendment could be unworkable because of the lack of precision of many terms in the amendment, such as "outlays" and "receipts."

Many Experts Oppose Balanced Budget Amendment

In our opposition to the balanced budget amendment, we join many distinguished Americans who also say "no" to altering the Constitution for economic purposes. Director of the Congressional Budget Office Rudolph Penner, formerly with the American Enterprise Institute, in 1981 appeared before the Congress and stated:

"I strongly believe that our fiscal policies should aim for a balanced budget and that government should play less of a role in our lives. I do not, however, believe that amendments to the Constitution provide useful tools for attaining such goals. Indeed, they are likely to do more harm than good."

In addition, I add the names of Nobel Prize-winning economists such as Paul Samuelson, Kenneth Arrow, Lawrence Klein, Herbert Simon, and James Tobin, among others, who in the spring of 1982 submitted a joint letter to Congress disclaiming the need for such amendments. They stated:

"Most of us agree the Federal budget deficits can be and often have been incurred unwisely -- at the wrong times, or in the wrong amounts. However, we do not believe that the quality of our economic policies will be improved by amending the Constitution. Rather, they will be improved only through better and wider public understanding of the economic elements in national policy, and by electing public officials who are competent, responsible, and responsive to the will of the electorate."

I should stress that Congress wisely heeded the calls of these experts and others at that time and rejected those proposed balanced

budget amendments. I would think that today the result would be the same.

Congressional Authority to Balance Budget Already in Place

It is important to note that Congress is already endowed with the means to balance the federal budget - through its taxing and spending authority. Moreover, there is nothing holding the Administration back from making good on its 1980 campaign promise of a balanced budget. The President could have submitted a budget to Congress which met this goal. Instead, the budget proposed by the President in February of this year allows for a deficit of nearly \$200 billion. Words written by conservative columnist Joseph Kraft back in 1982 come to mind. They are from a May 16, 1982 article, "A Rage to Amend," published in the Washington Post:

"The balanced budget goes to the heart of the legislative process. Nothing is more appropriately the province of Congress than the levying of taxes and voting of appropriations. The size of the deficits now impending stamps support for the amendment by the Reagan administration as a classic example of the drunk preaching temperance."

Indeed, if the Administration and those supporting the balanced budget amendment were to address the current situation in the federal budget, all could take advantage of the advice of the nation's leading economists and business leaders alike who have called for reduced defense spending and an increase in taxes as two vital means to help lower the current deficit. But the Administration persists in pushing for a 13 percent after-inflation increase for defense spending, and treads extremely carefully in supporting any new taxes.

A recent House Budget Committee report emphasized that of the \$928 billion that would be spent in FY 1985 if "current services" were extended, it would be very difficult to make cuts in some \$671 billion for programs that are vital links in the chain of the social contract between the American people and their government. These include Social Security, Medicare and medicaid, other entitlement programs, interest

payments on the debt, and prior-year commitments for defense and domestic programs.

This would leave defense spending of roughly \$173 billion, and \$83 billion in nondefense discretionary spending. Given the current defense priorities of this Administration, it is most likely that any cuts made with the aim of achieving a balanced budget would come from the remaining \$83 billion. With the nearly \$200 billion deficit, even wiping out all the remaining discretionary spending programs would not erase even half of this current year's deficit.

Balanced Budget Amendment Would Hinder Economic Recoveries

We believe those experts who say that enactment of a balanced budget amendment would assure a return to the devastating economic cycles of the pre-Depression era by effectively dismantling the fiscal weapons needed to combat both unemployment and inflation. We need only look back on the last few years of the recession from which we are only now beginning to recover. A balanced budget requirement would have forced our economy into a far more severe downturn. The federal government would have been hard pressed to respond quickly with vital programs to help turn this recession around. Although budget cutbacks were harsh, with a balanced budget amendment, important unemployment compensation and social welfare programs could have been entirely choked off. The result could have been a never-ending cycle of deeper recessions, resulting in even larger budget deficits - and a further erosion of the economy.

With a balanced budget in place during recessionary periods, states and local governments in times of greatest need would be forced to either increase taxes to maintain jobs, services, and programs, or to simply eliminate them.

Balanced Budget Could Destroy Vital Social Programs

Even in periods of relative economic growth, this balanced budget straitjacket would destroy federal programs in education, housing,

health, transportation, job creation and training, unemployment assistance, and public works; and prevent adequate enforcement of labor, antitrust, civil rights, and other laws. It would also undermine vital programs such as environmental and consumer protection; and it would wipe out federal research and development funds for health, science, energy, and agriculture. Major federal initiatives such as the space programs, defense, federal pollution control construction projects, the interstate highway system, and research in science and medicine would be jeopardized.

Program would be pitted against program, and who would have the final say as to which program funding has the highest priority? It is clear that the most adversely affected by efforts to balance the federal budget by constitutional mandate would be the poor, the uneducated, the handicapped, and low- and middle-income workers.

Congressional Authority Under Attack

A balanced budget amendment will cripple Congressional authority to address a national defense crisis. Congress would be required to undertake and win by a super-majority vote the right to exceed a balanced budget in order to meet national defense needs during wartime. The delicate balance of power within our tripartite system of government would be upset by the shift of economic decision-making power traditionally reserved to Congress.

Balanced Budget Amendment Could Be Unworkable

Because many of the terms used in both S.J. Res. 5 and S.J. Res. 22, such as "receipts" and "outlays," are not explicitly defined, the procedures used to implement the amendment would be unclear. Since, particularly in the last several years, estimates used in budgets on outlays and revenues have later proven to be incorrect, these proposed amendments could result in a situation in which Congress would have to constantly revise the budget to reflect updated estimates of spending and taxes.

With the possibility of a constantly revised federal budget, recipients of federal monies, such as local school districts, would be unable to effectively and efficiently plan for and carry out their programs.

We're also concerned that under the current wording of the proposed amendments, the power and authority of the Presidency to impound federal funds would be enhanced. This could result in a lessening of Congressional authority and control in this vital matter.

Constitutional Experts Call Amendment Unnecessary

Finally, on the Constitutional scope of this measure, it is important to note that in 1979, the Committee on Federal Legislation of the Association of the Bar of the City of New York stated in its paper "Budget-Balancing by Constitutional Amendment" that adopting a balanced budget amendment would add to the Constitution an amendment "unlike any other existing amendments both in form and substance." The paper then goes on to compare a balanced budget amendment to the 18th and 21st amendments to the Constitution - those imposing and then repealing prohibition - stating:

"...they are alike in that they do not state fundamental principles to which we firmly and irrevocably commit ourselves as a nation; nor do they correct errors in the constitutional structure of government or safeguard individual rights. Like the prohibition amendment, the proposed budget-balancing amendments reflect much less basic and more transitory concerns which, however popular they may now be, do not, in our view, warrant elevation to permanent constitutional status. The practical and policy issues raised by the amendments are best left to the political arena."

Conclusion

Mr. Chairman and Members of the Committee, we at NEA believe that the balanced budget amendment is serving as a smokescreen for this Administration to tout a policy of budget responsibility while ignoring the realities of our present fiscal situation and the enormity of the deficits created by its own budget requests. The appropriate response to our economic condition lies not in constitutional gimmickry; rather, it is for the Congress and the Administration to undertake the kinds of

constructive policies which will provide long-term economic health and growth. The NEA stands ready to work with you in promoting sound policies - policies which will enhance our economy, ensure equity, and help bring the federal budget into an appropriate balance.

Attachment

The NEA Legislative Program for the 98th Congress adopted by the
1983 NEA Representative Assembly

Revision of the Tax System or Structure

The system of federal taxation should equitably reflect individual and corporate ability to pay. NEA supports federal tax revisions which would close unfair corporate tax loopholes which significantly reduce revenues. Tax schedules should be equalized to completely remove the "marriage tax" penalty. The more progressive nature of the federal income tax should be used to provide governmental services which adequately address national needs. NEA opposes any effort to amend the Constitution respecting tax limitations or the federal budget and the indexing of future income tax revenues.

Senator HATCH. Thank you so much for your statement. As always, we appreciate your having taken time to be with us. We appreciate all the witnesses who have appeared this day. We realize it takes some real effort to put these statements together.

This is the only day we will hold hearings on the balanced budget/tax limitation amendment. Within the next 2 weeks we will probably mark up this amendment in this subcommittee and go from there.

As you all recall, back in 1982 we had a knockdown, dragout battle on the floor of the U.S. Senate over this amendment we made a couple of changes and then passed it by the requisite two-thirds vote, plus two. It then went to the House and passed by a very good majority vote, but not the requisite two-thirds vote.

We will see what happens this year, and believe this public debate will be very fruitful and helpful on both sides. If nothing else, it will continue to bring the attention of people toward how important these issues really are.

I might mention that although this is the only hearing we are holding this year, this is the 13th day of hearings over the past three Congresses on this particular amendment. Therefore it is well-heard. We have listened to a wide range of viewpoints, and I believe the amendment has arisen due to a lot of criticisms and suggestions made by various interest groups across the country and by various constitutional authorities. We are grateful to all of you for putting forth this type of effort.

With that, we will recess this subcommittee until further notice.
[Whereupon, at 11:48 a.m., the subcommittee was adjourned.]

A P P E N D I X

ADDITIONAL SUBMISSIONS FOR THE RECORD

**A COMPELLING CASE FOR A
CONSTITUTIONAL AMENDMENT
TO BALANCE THE BUDGET AND
LIMIT TAXES**

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May 1982

**A paper prepared for the
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Introduction

On November 26, 1798, a decade after the U.S. Constitution was written, Thomas Jefferson wrote, "I wish it were possible to obtain a single amendment to our Constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its Constitution; I mean an additional article, taking from the federal government the power of borrowing."

Today, the need for such an amendment to the Constitution is greater than ever. Large and protracted federal deficits have brought havoc to today's economy. The nation's trillion dollar debt represents a true and onerous burden to the average American citizen. The carrying cost on the debt has skyrocketed. The bill we pay arrives in several forms: higher taxes, declining real income, higher interest rates and, at present, a recession.

Are deficits the only cause of our economic troubles? Of course not. Many of the undesirable consequences popularly attributed to deficits would have occurred if government spending and money creation had followed their historic path of the past twenty years even with the budget balanced. However, the burden of taxation on current and future generations would have been quantitatively different. Government debt would be lower, tax rates higher and inflation about the same. The disincentive effects of taxes on investment and employment would not have been avoided. Therefore, in order to preserve our economic and political freedom, it's necessary to both outlaw deficits and to place a cap on taxes such that the size of government, relative to the entire economy, does not increase.

Statutory Reform: Historically and Inherently Flawed

Reforming the federal budget process has been and remains a popular topic with politicians, scholars and taxpayers. Many of the reformers believe that statutory changes in the way Congress conducts its business can bring about a responsible federal budget without resort to a constitutional amendment. Proponents of this view claim that statutory reform would avoid the time-consuming and cumbersome process of amending the Constitution to achieve fiscal restraint. They believe that Congress is capable of drafting legislation that will put its fiscal house back in order. This view has repeatedly been proven false, however.

Concern over reforming the congressional budget process has been debated extensively since 1921. For example, the Revenue Act of 1964 stated:

To further the objective of balanced budgets in the near future, Congress by this action recognizes the importance of taking all reasonable means to restrain government spending.

The Budget and Impoundment Control Act of 1974 enacted major reforms—the establishment of budget committees within each house, the creation of the Congressional Budget Office to supply timely information and analysis, and the development of a budgetary timetable—to enable Congress to consider individual spending measures in light of overall budget objectives. In the Humphrey-Hawkins Full Employment Act, a balanced budget was declared to be a national public policy priority. An amendment offered by Rep. (now Senator) Charles Grassley and Senator Harry Byrd, Jr. to an IMF loan program measure was enacted into law and requires that, beginning with FY 1981, total budget outlays of the federal government “shall not” exceed its receipts (P.L. 95-435). In 1979, a provision in a measure to increase the public debt limit stated that “Congress shall balance the federal budget” (P.L. 96-5), which required the congressional budget committees to propose balanced budgets for FY 1981 and subsequent years.

None of these measures has effectively constrained deficits.

None has reduced the share of national income taxed or spent by government. The most obvious reason for this is that no Congress can bind a succeeding Congress by a simple statute. A balanced budget or tax limitation statute can itself be repealed by the simple expedient of adopting a new statute or new budget which is in conflict with the earlier measure. The Byrd-Grassley amendment, which required a balanced budget for FY 1981, provided no deterrent whatsoever to the adoption of a budget with a \$50 billion deficit for that year.

Indeed, legislation passed by Congress has exacerbated the problem of runaway federal spending. A convincing case can be made that control over the budget has steadily declined since the 1974 Act. Despite congressional adherence to the budget timetable, deficits have assumed record proportions: seven deficits exceeded \$40 billion in the 1970s, and a regime of \$100 billion deficits appears likely in the early 1980s. Control over off-budget outlays has eroded even more sharply: off-budget outlays have increased from less than \$1 billion in FY 1973 to surpass \$20 billion in FY 1982. Finally, those items in the budget which are known as "uncontrollable" have increased from 72 percent in FY 1973 to 77 percent in the FY 1983 budget. (Technically defined, an uncontrollable is budget authority or an outlay which would require substantive legislation to cancel. These consist chiefly of open-ended entitlements such as Social Security and Medicare, open-ended programs such as interest payments on the national debt and farm price supports, and contracts and obligations entered upon in the past and payable in the present.) Congress has thus been wholly unable to impose its own priorities on the budget.

The source of this failure lies in the fact that there is a structural bias within our political system that causes higher levels of spending, taxing, and deficits than are desired by the people, even though most members of Congress believe that large deficits and excessive government spending damage the economy. This spending bias has yet to be corrected by internal reform, because none of these reforms allow members to cope with spending pressures. As will be demonstrated,

the removal of prior constraints calls for the imposition of a new constraint. A constitutional amendment would reimpose those constraints that the framers of the Constitution originally imposed or assumed. It would go a long way to correcting the serious defects in the institutional setting within which Congress now operates.

Amending The Constitution

Article V of the Constitution provides two methods of proposing amendments. The first method, by which all 26 amendments have thus far been adopted, requires the proposal of an amendment by two-thirds of each House of Congress, and ratification by three-fourths of the states. The second method allows for an amendment drawn by a constitutional convention, which must be called by Congress in response to the application of two-thirds of the states. Whichever method is invoked, the proposed amendment must be approved by three-fourths of the states (38) before it becomes part of the Constitution.

Since 1975, the National Taxpayers Union has worked with the state legislatures to pass resolutions—of which thirty-one have thus far been approved—calling upon the Congress to invoke Article V of the Constitution and convene a constitutional convention for the purpose of writing a balanced budget amendment.

In early 1979, largely because of pressure being exerted by the states to convene a constitutional convention, the Senate Judiciary Subcommittee on the Constitution also began efforts to develop its own constitutional proposal to prohibit budget deficits. Senate Joint Resolution 58 (S.J. Res. 58), a combined balanced budget-tax limitation amendment, was reported out of the full Senate Committee on the Judiciary on May 19, 1981. Its companion in the House of Representatives is House Joint Resolution 350. The National Taxpayers Union is still actively working with several state legislatures—trying to bring the constitutional convention movement to a successful conclusion—in the belief that the continued pressure from the states will force the Congress to act. During the current session of

Congress, both the Senate and House may well debate and possibly approve S.J. Res 58/H.J. Res. 350.

A balanced budget amendment could overcome the inherent bias for increased federal spending by restoring the link between federal spending and taxing decisions. Under the terms of S.J. Res. 58, Congress could only adopt a planned budget deficit upon a three-fifths vote of the whole membership of both Houses. Moreover, unless Congress approved a bill by a majority vote of both Houses to increase taxes, federal revenues could not grow faster than the private economy; the amendment thus prohibits the federal government from consuming an ever-increasing share of our income.

Americans have come to the realization that the problem of deficits in this country is not one that can be resolved by any one individual or group of individuals. It is an institutional problem requiring a constitutional solution.

Many Americans believed that the election of fiscal conservatives would restore integrity to the conduct of the nation's fiscal business. They believed that a conservative President, Ronald Reagan, working with a conservative Congress would get control over the federal budget process. To their dismay, President Reagan has already abandoned his goal of a balanced budget by 1984. He has proposed future budgets with all-time record deficits, and he has even presided over an overall increase in government spending as a share of Gross National Product. The national debt, which surpassed \$1 trillion in October 1981, is now forecast to grow by half-a-trillion dollars by 1985.

As a result of this abysmal failure to bring deficits under control, support for a balanced budget amendment now transcends both members of Congress and the state legislatures. Despairing of the federal government's ability to restrain spending and eliminate deficits, the American public has expressed its support for a constitutional amendment to require a balanced federal budget. According to Gallup, 80 percent of all Americans favor such an amendment.

Had the founding fathers not taken for granted the concepts of limited government, they might have incorporated a

balanced budget amendment into the original constitution. Indeed, it was the 16th amendment, which authorized Congress to "lay and collect taxes on incomes," that is at the root of our present discontent with the budget process. Without a progressive income tax code, government spending might be substantially lower and the need for a restraining amendment correspondingly less.

175 Years of Fiscal Prudence

The founding fathers adopted two explicit constitutional provisions and assumed a third which served to restrain spending. One reserved powers not expressly delegated to the federal government to the states and to the people. The second provided for per capita distribution among the states of taxes on income. The third, implicit, assumed that federal spending would not exceed federal revenues except in times of war or recession. All three have been abrogated or eroded by time and events, especially by the adoption of the Sixteenth Amendment (income tax) in 1913. Indeed, it is the income tax amendment that lies at the roots of the current balanced budget amendment movement.

Someone born in the post-depression era would regard deficit financing as normal budget practice. Yet until the great depression, the balanced budget, save in wartime or recession, was considered part of our "unwritten constitution." Thomas Jefferson warned that "the public debt is the greatest of dangers to be feared by a republican government" and proposed the idea of a balanced budget amendment as early as September 6, 1789. Alexander Hamilton strongly urged the repayment of national debt. Presidents John Adams, James Madison, James Monroe, John Quincy Adams, and Andrew Jackson all urged avoiding public debt. A balanced budget was synonymous with sound political economy.

Until the Great Depression of the 1930s, budget deficits occurred only in times of war and recession. The budget surpluses generated in good times were invariably used to reduce the national debt these deficits produced. Historical deficits of large proportions arose during the Revolutionary War, the

War of 1812, the Mexican War of 1846, and during brief recessions in the late 1830s and 1850s. In each instance, the debts were immediately reduced at the onset of peace or prosperity. Between 1795 and 1811, Congress cut the national debt nearly in half from \$84 million to just over \$45 million. After the War of 1812, eighteen surpluses (of 21 budgets) between 1815 and 1836 virtually eliminated the national debt. A run of 28 consecutive surpluses following the Civil War lowered the national debt from \$2.7 billion to \$960 million. Finally, throughout the 1920s, consecutive surpluses reduced the national debt from \$24 billion to \$16 billion, at the very time that major tax rate reductions were approved.

Sustained deficits first arose during the depression years of the 1930s and the war years of the early 1940s, leaving in their wake a national debt of about \$170 billion. These deficits were consistent with the national experience of war-time and recession. When peace returned, deficits again disappeared. Between 1947 and 1960, seven surpluses of \$31 billion roughly offset seven deficits of \$32 billion. However, for the first time in American history, no effort was made to reduce the national debt.

Why the Congress Can't and Won't Control Federal Spending and Deficits

Due to the operation of the unwritten norm of budget balance, the federal government was rarely troubled by budget deficits through almost 200 years of our history. Indeed, revenues and expenditures were not incorporated into an overall official budget until 1921.

But today federal budgets are wildly out of balance. Why?

The answer lies in the political reality that budget objectives and the budget process are in direct conflict. The Congress, as a whole, is concerned with stable prices, low interest rates, and full employment, which require some check on the scope of government spending. As individuals, however, each congressman confronts pressures to increase spending. The reality of our system has shown convincingly that the collective need to control spending is no match for the pressures

each individual member faces to increase it.

The tendency for federal spending to grow is clearly highlighted in historical debates on congressional reform:

The growth of the cost of government as expressed in the increase of Federal taxation has been astounding . . . Our failure to reduce that cost has called attention to our need of the adoption of a system which will prevent waste and extravagance with inevitable inefficiency in the various departments.

Our present system cannot be conducive to economic administration, as it invited increased expenditures through the perfectly natural rivalry of numerous committees and the inevitable expansion of departments . . . Our present system is designed to increase expenditure rather than reduce it.

Each committee in the House quite naturally is jealous of both its jurisdiction and success in legislation. It will therefore push to the limit its jurisdiction over legislation and its demand for appropriation that enlarges the function falling under its jurisdiction. Appropriations from the several committees become a race between or among rivals to secure funds from the Treasury rather than safeguard them . . . The pressure is for outlay.

These words stem from the various participants in the debate on the Budget and Accounting Act of 1921, not the 1974 Act! Yet they are the same misgivings articulated during the debate on the 1974 Act. And despite the 1974 Reform Act, the misgivings still remain.

The concerns they represent reflect the empirical fact that the American political process is biased toward higher levels of federal spending; levels which do not reflect the genuine will of the people on the overall size of the budget. Federal spending is skewed toward these artificially higher levels because members of Congress have powerful incentives to spend the taxpayers' money yet they face few offsetting incentives to watch out for the taxpayers' interests.

Spending Biases

This bias toward more spending is due, first, to what analysts of government call the phenomenon of "concentrated

benefits versus dispersed costs." This describes the fact that the benefits of any given spending program normally are concentrated among a small number of persons, while the costs of such a program are dispersed throughout a much larger class, the general taxpayer.

The competition between tax-spenders and tax-payers is highly unequal: it is simply not as worthwhile for an individual taxpayer to spend much time and effort to save a few dollars in taxes as it is for the spending interests to secure millions or billions of dollars for themselves. The latter intensely focuses on those few spending measures from which they derive benefit, while the individual taxpayer, who might normally be concerned about the broader impact, is less likely to organize for the purpose of defeating a particular spending measure. Spending interests are able to reward or punish legislators with their organized electoral support or opposition. Taxpayers find it more difficult to perceive their self-interest in the context of isolated pieces of legislation. Thus, whenever government programs are considered one by one, as they are in our budgetary system, there is a bias toward government growth. The result has been annual budget growth in the neighborhood of \$100 billion, with even larger deficits forecast.

The explosion in federal spending is not due to the failure to elect the "right" people, it is an institutional defect. The federal budget process is inherently biased toward deficits, higher taxes, and greater government spending. The trends toward bigger government and economic instability reflect the decisions of reasonable men and women in Congress who, as individuals, cannot successfully resist the pressures they face to increase spending.

A second source of bias toward greater spending is the separation of benefits, which are short-run, from costs which are typically more long-run. The benefits of spending programs are immediate, both to the recipients and the sitting congressmen who supported them. The costs of spending programs—in the form of potentially higher future taxes, higher future inflation, higher future unemployment or higher

future interest rates—will be evident only at some future time, to be borne, perhaps, by future congressmen. Since the electoral time horizon of all House members and one-third of the senators is never more than a year or two away, short-term benefits invariably take precedence over potentially long-run adverse economic effects due to higher government spending.

A third bias arises within the structure of Congress itself. The committee system, whatever its original intentions, finds members of Congress gravitating to those specific committees that allow them to serve their geographic constituencies by bringing home their "fair share." Farm state members typically serve on the agricultural committees, Western legislators on interior policy committees, urban legislators on urban policy committees, and so on. Reelection rewards those congressmen who successfully serve their constituencies, at the same time the actions of Congress as a whole damage the growth rate of the economy. The driving elements in each congressman's calculation is protecting his turf, getting his share of the pork barrel, not transgressing his colleague's committee jurisdiction; in short, concerns about self come first. It is not in the interest of an individual congressman to give up those dollars that benefit his constituents, since that reduction will have only a modest or even insignificant effect on overall spending. The same situation fits all 535 members of Congress. Unless the entire membership can agree to limit spending, no one member or group of members dare risk their constituents' wrath by surrendering benefits that have no appreciable effect on the total size of government spending, while their colleagues, who do not forego spending, continue to earn the support of their respective constituents. The only viable solution to this dilemma is to alter the incentives which confront members of Congress. That is, we must change the rules under which congressmen operate.

Currently, there are two major gaps in these rules which nourish Congress' spending bias and flout widely recognized customs of fiscal prudence. First, members of Congress enjoy virtually unlimited access to deficit spending. As the "un-

written" rule of budget balance has been discarded, members of Congress can vote to increase spending without a concomitant vote to increase taxes. Spending decisions have become increasingly divorced from the availability of revenues. As a result, members of Congress can satisfy the demands of particular spending interests without either reducing spending for another interest or taking political heat for raising taxes. Rather than choose among alternative spending proposals, members jointly act to increase the deficit. The availability of deficit spending reduces the need for members to make hard political decisions by choosing among spending proposals.

A second element in the spending bias is that under our present tax system, members of Congress have access to annual, automatic tax increases. Our progressive tax code works to transfer more and more of our personal income to the government, because as individuals' incomes increase, they are taxed at progressively steeper rates. This rising share of national income paid in taxes is due to increases in real income or to inflation, a phenomenon known as "bracket creep," which has had the especially pernicious effects of raising tax burdens. In the last decade, government income tax collections have risen by about 16 percent for each 10 percent increase in personal income, largely as a result of inflation. In the last three years government receipts have outpaced inflation while average weekly earnings in private industry have fallen in real terms. Resources are being increasingly shifted from private to public hands. By trying to break even with cost of living increases, the typical wage-earner actually falls behind.

A progressive tax system allows Congress to raise taxes without having to vote an explicit increase either in tax rates or the size of the tax base. Federal income tax yields have grown about 75 percent faster than the GNP, which has allowed Congress to simultaneously collect a growing stream of revenues and enact a sequence of nominal tax cuts. Although Congress passed "tax-reform" measures in 1954, 1964, 1969, 1971, 1976, 1977, 1978, and 1981, taxes have not declined. It

is only their rate of increase that has slowed. The accelerating frequency of congressional action reflects the higher rates of inflation throughout the 1970s. In each instance of tax reform, a rising trend of taxation was interrupted, but the long-run trend has been upwards.

Here again, individual congressmen confront strong incentives to do what is far from in the best interests of society. The benefits that they must deliver to retain their office prompts congressmen to support inflationary policies which net them greater spending authority, hence the ability to meet the demands of special interest groups.

Congress has finally voted to correct inflation-generated "bracket creep" by indexing tax rates to inflation, to take effect in 1985. In that event, the progressive tax code would only transfer a greater share of personal income to government when real growth occurs. But many economists and politicians have begun to suggest repeal or postponement of the indexing provision before 1985 to prevent "a drain" on Treasury revenues, thus maintaining the automatic increase mechanism.

The Fiscal Experience Since 1960

Since 1960, these biases have yielded the current spending habits of the Congress; that is, deficits have become the accepted practice of federal budgeting. Apart from one modest surplus of \$3 billion in 1969, the Congress has imposed a regime of persistent deficits. A national debt of \$300 billion in fiscal year 1962 rose to \$437 billion in fiscal 1972, surpassing \$1 trillion in October 1981. Eight deficits in the 1970s were \$40 billion or greater. Interest payments, which absorbed approximately six percent of the national budget twenty years ago, consumed about twelve percent in FY 1981. It is a figure half as large as spending for national defense and one-third as large as spending for income security programs including Social Security. (Nor does this figure include the growing unfunded liability of social insurance programs and the implicit obligations of loan guarantees.)

The breakdown of the balanced budget norm fueled an

explosive rise in federal spending. As recently as 1929, federal spending of \$3 billion consumed only 3.1 percent of the gross national product (GNP). Since then, the federal sector has demonstrated a continuing propensity for growth, whatever the economic circumstances. In successive decades, federal spending grew to consume 10.0, 15.6, 18.5, 20.3, and 23.1 percent of GNP by 1980. In money terms, federal spending passed the \$100 billion mark in 1962. A \$200 billion budget was reached only 9 years later. In rapid-fire succession came \$300 billion (1975), \$400 billion (1977), \$500 billion (1980), \$600 billion (1981), with estimates of one trillion dollars by 1985.

A comprehensive picture of government spending must also include the spending totals of off-budget federal entities (e.g., Federal Financing Bank, Strategic Petroleum Reserve, Postal Service Fund, Rural Electrification and Telephone Revolving Fund, Rural Telephone Bank, U.S. Railways Association, and Synthetic Fuels Corporation). These have risen from \$60 million in FY 1973 to \$10 billion in FY 1978 to \$21 billion in FY 1981. The Reagan administration, despite pledges to reduce off-budget outlays, even included the Strategic Petroleum Reserve as an off-budget item in its first year to lower the official budget deficit.

The growth of federal spending has carried with it an enormous increase in federal tax burdens, which have risen from 15 percent of GNP in 1949 to 22 percent today. Taxpayers also face much higher marginal rates on income as inflation has pushed them into higher tax brackets. Households in the 70th percentile of taxpayers have seen their average top marginal rate rise from 20 percent in 1966 to 28 percent by 1981; for those in the 95th percentile, from 25 to 46 percent. Per capita tax receipts have nearly doubled in the past five years alone. The number of individual taxpayers paying more than 20 percent of their income to the federal government has nearly tripled in the past 15 years. Rising tax burdens, especially high marginal rates faced by many taxpayers, have eroded the incentives to work, save and invest.

Thus in sharp contrast with historical experience, the fed-

eral budget process has failed to show restraint in the post-WW II era. For the better part of 200 years, Americans held to a limited role for the federal government. Save for periods of war or recession, revenues from customs and excises were sufficient to fund those activities widely regarded as "proper" federal function. This consensus has broken down in the last fifty years. The greater part of the current federal budget is devoted to activities not funded fifty years ago.

What It Means When Congress Orders a Deficit and the Effect is Has Upon Our Lives

The federal government can finance its deficits in three ways. It can raise taxes. It can borrow in the capital markets. Or, it can print new money. By raising taxes, the government reduces the incentives of individuals and business to work, save and invest. By borrowing, the federal government competes with private borrowers, raises the rate of interest, and ultimately crowds out private borrowing. By printing money, the government fosters inflation which, in turn, reduces investment by increasing the risk-premium on long-term investment. In recent years tax burdens and high marginal rates have risen substantially. The 1981 tax rate cut attempts to correct this problem. Without new taxation, future deficits are likely to be financed largely by borrowing or new money creation. Let us examine the effects of these two methods.

Borrowing. When the government borrows to finance its budget deficit, it has an unfair advantage in its competition with private borrowers. Since government borrowing is backed up by the "full faith and credit" of the United States government, *viz.*, the power to tax, the government gets first call on the available supply of credit. Moreover, the government will pay whatever rate of interest is required to get the funds it needs to sustain government spending. Private borrowers are not so flexible.

The price of credit—the interest rate—is determined by the intersection of the supply of and demand for credit. In the past decade, the percentage of disposable personal income that was saved fell by about half, from nearly 8 percent in

1971 to about 4 percent in 1980. As a result, total real savings have fallen, reducing the supply of new credit. At the same time, the government has sharply increased its annual demand for new credit. Total federal and federally-related borrowings have risen from \$33 billion in FY 1971 to \$155 billion in FY 1981. The rate of increase in government demand for credit has outpaced new savings. As in any such situation of rising demand, the price of borrowing will rise because of the competition among borrowers for limited funds. But when interest rates rise, private citizens will borrow less. Thus private borrowing is crowded out.

Borrowing to finance large deficits need not crowd out private borrowers if the supply of new savings is large enough to satisfy both public and private demands for credit. In Germany and Japan, savings rates have been from three to five times as large as in the United States, which explains why the German and Japanese governments can run substantially larger deficits as a share of GNP than the United States government, without equally adverse economic effects. The conjunction of rising credit demands and lower savings rates in the United States has driven up real interest rates to levels higher than at any period in our nation's history. To the extent that deficit finance raises real rates of interest and reduces investment in plant and equipment, we have fewer tools or machines in our old age and leave fewer tools for our children. We consume relatively more today but we are poorer and have fewer goods available tomorrow.

It is important to note that private borrowing is used disproportionately more for investment than is government borrowing. Budget deficits that are financed by borrowing mean that funds which might be used for the creation of capital goods are instead used to subsidize consumption. Deficits thus crowd out some investment in favor of greater consumption. Although some capital investment will still take place, the amount is lower than it would have been in the absence of a budget deficit.

Money Supply Growth. The inflation which began in the late 1960s has been associated with large and continuing federal deficits. Apart from Treasury borrowing, the government can also finance deficits by printing new money. This result occurs when the Federal Reserve Board (the Fed) increases its ownership of Treasury debt, which, in turn, effectively increases the amount of money and credit in circulation. This process is referred to as monetizing debt, which is largely synonymous with printing money to finance deficits.

It is technically true that there is no necessary relationship between budget deficits and money creation. The Fed can keep its ownership of government debt unchanged despite deficits, or increase its ownership of outstanding government debt in the absence of a deficit. Assume it does the former. Persistently large deficits, coupled with inadequate savings, will place upward pressure on interest rates, thereby crowding out private investment. This, in turn, leads to recession and higher unemployment. To ease these effects, the Fed can increase its ownership of Treasury debt, thereby increasing the supply of money. As the supply of loanable funds expands, other things being equal, the rate of interest will fall and fewer private borrowers will be crowded out. However, money creation reduces the real value of the existing stock of money, thus contributing to inflation.

Persistently large deficits during a period of economic recovery foster long-run inflationary fears that the Fed might monetize some portion of this debt. In the past decade, purchase of government debt by the Fed has contributed to rising inflation. Inflation, in turn, disrupts savings, investment decisions, and the prospects for economic growth. Personal savings rates fell throughout the 1970s and the average service life of capital expenditures, so vital to future increases in production efficiency, began to shorten.

Inflation puts economic stability and growth at risk; it has undercut investment and employment by increasing uncertainty over the profitability of long-run investments. This uncertainty, which is embodied in investment calculations in the form of higher risk premiums, prevents a normal pack-

age of capital projects—especially those for which the profit expectations are skewed toward the later years of the investment, eight, ten, or fifteen years in the future—from meeting acceptable financial criteria.

Reflecting increased investment risk, price earnings ratios in the stock markets have fallen to their lowest levels in two decades, largely as a consequence of the increased discount rate imposed on expected earnings growth. An inflationary environment makes it more difficult and uncertain to calculate the rate of return on new investment. Inflation not only skews rate-of-return calculations, it also acts to shift the investment pattern toward shorter-lived projects in which the uncertainty is less.

High investment risk thus blunts capital formation and the level of economic activity. It replaces the creation of long-lived capital assets with undue focus on the short run. To restore long-term investment requires a high level of business confidence, which can only be obtained by a credible and sustained reduction in long-run expectations about inflation. This implies that budget deficits must be minimized, preferably eliminated, thereby removing the consequent pressures on the monetary system of large federal deficits.

Interest rates are high because the demand for credit is high, especially on the part of the federal government. Money supply growth in recent years has been excessive, in part, because the Fed feels compelled to suppress interest rates by at least partially accommodating the excess credit requirements. Thus the prospect of multi-hundred billion dollar deficits in the next few years implies (if savings do not increase dramatically) continued crowding out and high interest rates or purchase of additional debt and a renewed inflationary spiral, which was the cause of declining business investment in the first place.

In short, deficits matter!

In fact, deficits matter in ways other than those purely economic. Yet another effect of excessive government spending has been the erosion of public confidence in government. Surveys conducted by George Gallup, Louis Harris, the In-

stitute of Social Research at the University of Michigan, and CBS/New York Times reveal major shifts in public opinion between 1957 and 1978. The percentage of respondents who said that government wastes money rose from 46 to 80. But the number of those who said they trust Washington to do what is right most of the time declined from 75 to 34 percent!

Americans have increasingly felt the effects of inflation. Between 1958 and 1973, for example, the number of Gallup's respondents naming inflation as the nation's most important problem was always less than 20 percent. Since 1974, the percentage has ranged from a low of 25 to a high of 79. Complaints about taxes and government waste have escalated as taxpayers endured rising rates of inflation and stagnant real income. Indeed, according to Gallup, 80 percent of the American people favor a constitutional amendment to require a balanced budget.

SENATE JOINT RESOLUTION 58. A BALANCED BUDGET-TAX LIMITATION CONSTITUTIONAL AMENDMENT

Since 1979, members of the Senate Judiciary Subcommittee on the Constitution have sought to develop a "consensus" measure that would attract the support of as many proponents of a constitutional initiative as possible. Senate Joint Resolution 58, a combined balanced budget and tax limitation amendment, was voted out of the Subcommittee by a 4-0 vote on May 6, 1981, and reported out of the full Senate Committee on the Judiciary by an 11-5 vote on May 19, 1981. The measure enjoys the support of both the National Taxpayers Union, progenitor of the balanced budget constitutional convention movement, and the National Tax Limitation Committee, formerly sponsor of the Heinz-Stone spending limitation amendment.

Let us examine each section of the proposed amendment to see how it would redress the present imbalance in our budgetary process.

BALANCED BUDGET

Section 1. Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipt by a vote directed solely to that subject. The Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement.

The purpose of Section 1 is two-fold. First, Congress would be required to plan to balance its budget every year. It would do so by adopting a "statement" or budget prior to the start of each fiscal year, in which planned outlays (spending) do not exceed planned receipts (revenue). Congress could violate this rule and plan for a deficit only by a three-fifths vote of the whole number of each House of Congress, not just three-fifths of those present and voting. In contrast, a simple majority could approve a budget surplus. Second, Section 1 also mandates that actual outlays do not exceed the spending levels set forth in the approved statement or budget.

It is important to point out that the amendment establishes the basis for a *planned* balanced budget. It does not require that the budget be in *actual* balance during the course of the fiscal year. In some circumstances, actual outlays may exceed actual receipts. For example, a recession might reduce actual receipts below the level of receipts set forth in the planned statement. This is permissible under the amendment, but actual outlays could not exceed statement outlays. Deficits caused by increased spending, would also not be permitted.

If circumstances warrant, the Congress may adopt an amended statement of receipts and outlays for the fiscal year (provided again that outlays do not exceed receipts) at any time during the fiscal year. An amendment statement containing a deficit would require a three-fifths vote only if such deficit was greater than the deficit in the previous statement. Thus

the budget would not be "locked in" and could be changed by an explicit vote of Congress in response to changing economic conditions.

An important feature of Section 1 is that it imposes upon the Congress and the president a mandate to prevent total actual outlays, which includes both on- and off-budget items, from exceeding statement outlays. For example, should the economy perform below expectations, leading to increased spending on "entitlements" or on debt service due to higher interest rates, the Congress would be called upon *either* to increase statement outlays and approve a deficit (by a three-fifths vote), or to postpone spending programs and/or to reduce eligibility for "entitlements." To guard against the possibility that actual outlays might exceed statement outlays through unintentional and presumably modest error, an obvious remedy would be for Congress to plan a surplus of equivalent size for the next fiscal year.

The Congress is expected to adopt the most accurate estimates of receipts and outlays that it can in drafting its budget, but in all cases a congressional majority will be the final arbiter among the choice of estimates. As the fiscal year unfolds, actual receipts may or may not meet expectations. An unexpectedly more robust economy may yield receipts above statement receipts; an unexpectedly weaker economy may yield receipts below statement receipts. Either result is permissible. The amendment imposes no obligation upon the Congress to react to the flow of actual receipts during the fiscal year, only to the flow of actual outlays.

Recent years have witnessed congressional failure to adopt a budget by the October 1 date on which a new fiscal year begins. Congress has funded government operations in such instances by adopting continuing resolutions. Under the amendment, this practice would be banned. Failure to adopt a statement of receipts and outlays by the October 1 deadline would be construed as an implied adoption of a statement in which both receipts and outlays are zero. In that event, the Congress and the President would be mandated constitutionally to ensure that fiscal year outlays also would be zero. In short,

the government would shut down on October 1 without prior passage of a budget by September 30.

Loans for which the federal government guarantees in whole or in part the repayment of principal and/or interest impose no funding obligation on the treasury unless and until such loans come into default and the treasury must discharge the guarantee obligation. Such a discharge is intended to be construed as an outlay in the fiscal year of discharge.

A large portion of federal spending is currently on automatic pilot. That is, spending for "entitlements" grows every year as a share of federal spending. An amendment prohibiting deficits would create a strong incentive to bring these "uncontrollables" under control, since they would compete directly with discretionary programs. At present, the automatic growth of spending on "uncontrollables" erodes the ability of Congress to impose its own priorities on the budget, which is tantamount to passing the congressional buck.

Section 1 proposes to overcome the spending bias of Congress by restoring the linkage between federal spending and taxing decisions. It does not propose to read any specific level of spending or taxing forever into the Constitution, nor does it intrude into the day-to-day decisions of the government as to how the federal dollar is allocated. It merely restores the balance between taxspenders by constraining spending totals to available revenues.

The amendment would compel public officials to determine first what resources are available to government (see Section 2 below) and, against that constraint, choose among the many competing claims on public spending.

Under the amendment, if politicians voted new spending programs, they would have to eliminate old programs or vote to raise additional taxes. Resistance to the elimination of existing programs or to tax increases would discourage many new spending proposals, thereby eliminating the current bias toward overspending. It would end future deficits and reduce the inflationary effect of new money creation, which has in past years both financed a portion of these deficits and raised taxes via bracket creep.

Political values and perceptions are important determinants of government action. For this reason, a balanced budget amendment is especially attractive. It is easy to understand—every household understands the need for living within its means. It is also widely supported.

TAX LIMITATION

Section 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the last calendar year ending before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

The purpose of Section 2 is to prevent tax receipts from growing more rapidly than the general economy, as occurs with our progressive tax code. Under the amendment, a "whole" majority of the membership of both Houses would have to vote to permit receipts to outpace general economic growth. In particular, Congress would be required to enact a bill expanding a specified tax base and/or increasing specified tax rates.

Put another way, Section 2 states that the balanced budget requirement in Section 1 should not occur at levels of receipts and outlays that consume an increasing proportion of the national economy. It attempts to achieve this result by limiting the increase in receipts for a new fiscal year to the percentage increase in the national income during the prior calendar year. If present tax laws are likely to yield revenues in excess of this limit, the Congress must modify the revenue laws to reduce anticipated receipts.

The relationship between the growth of national income during the prior calendar year and the growth of receipts during the following fiscal year provides the Congress with reasonably precise guideposts in its budgeting process. Quite accurate estimates of the growth in national income are available by mid-July prior to the beginning of the fiscal year.

Take fiscal year 1981, for example, which began October 1,

1980. The rate of increase in statement receipts for fiscal year 1981 would have been limited to the rate of increase of national income for calendar year 1979. Since national income rose 11.4 percent in 1979, statement receipts for fiscal 1981 could not have exceeded fiscal 1980 statement receipts by more than 11.4 percent. The planned increase for FY 1981 with no changes in the current tax law was set at 14.5 percent. Had the amendment been in effect, the tax law would not have produced this automatic tax increase. Taxes would have been about \$16 billion or lower. To increase taxes, Congress would have had to explicitly vote for a tax increase for FY 1981.

Statement receipts may also rise by less than the proportionate increase in national income. In that event, the new lower level of receipts would then become the base for statement receipts in subsequent fiscal years, until the Congress voted a rise in allowable receipts.

Let's recapitulate how the budget process would work under the amendment. First, the Congress would determine the increase in national income during the prior calendar year. That percentage rise, in turn, would determine the maximum increase in receipts the government could collect for the coming fiscal year. If, say, national income rose 10 percent during the last calendar year, then receipts could rise by *no more than* 10 percent for the new fiscal year. Since outlays cannot exceed receipts (the budget must be balanced or in surplus), government spending could not rise by more than 10 percent. Sections 1 and 2, in conjunction, establish a *de facto* spending limit. Thus neither taxes nor spending can grow more rapidly than the economy.

The amendment permits federal spending to grow more rapidly than the economy *only* if Congress explicitly votes to allow receipts to rise more rapidly than the growth of the economy. It takes a direct vote of a constitutional majority of both Houses of Congress to permit the growth of federal spending to outpace the growth of the economy. Or, federal spending may outpace economic growth if Congress approves, by a three-fifths majority vote, a deficit in which outlays from year to year exceed economic growth rates. Thus the

federal government is not hamstrung; it can meet what may be regarded as increased genuine needs of the people, if it also were prepared to vote on the record for higher taxes or deficits to finance higher spending.

WARTIME WAIVER

Section 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

In the event of a declaration of war, Congress has the discretionary authority to operate outside of the provisions of the amendment. Such a waiver would be on a year-to-year basis by concurrent resolution of Congress, as defined under Article 1, Section 8, of the Constitution. Congress would have to adopt annually a separate waiver for each fiscal year at issue.

BORROWING AND REPAYMENT OF DEBT

Section 4. Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

The purpose of Section 4 is to exclude the proceeds of debt issuance from receipts. Thus, treasury notes and bonds would not count as receipts, but as the proceeds of selling debt. Similarly, the term outlays is intended to include all disbursements from the Treasury of the United States, both "on-budget" and "off-budget," either directly or indirectly through federal or quasi-federal agencies created under the authority of acts of Congress. Section 4 states that funds used to repurchase or retire Federal debt would not count as outlays. Interest accrued or paid in conjunction with the debt obligation would, however, be included in outlays.

The amendment permits Congress to plan for a budgetary surplus. Those surplus receipts, subject to the increase limit of Section 2, used to repay principal—that is, retire national debt—would not be counted as outlays. Should the government fully retire the national debt, the amendment would still allow the government to plan for an annual surplus,

and even accumulate reserves. Interest earned on these reserves, however, would be subject to the revenue limit. (Admittedly, it would take generations for this scenario to develop.)

DATE OF IMPLEMENTATION

Section 5. This article shall take effect for the second fiscal year beginning after its ratification.

Section 5 stipulates when the amendment would take effect. If ratification were completed before September 30, 1982, the amendment would require Congress to adopt its first balanced budget statement before September 30, 1983; if ratification was completed between October 1, 1982, and before September 30, 1983, the first balanced budget adoption would be required by September 30, 1984, and so on.

SOME QUESTIONS AND ANSWERS ABOUT THE BALANCED BUDGET-TAX LIMITATION AMENDMENT

Q: Members of Congress face enormous pressures to increase spending. How would the amendment be enforced to overcome these pressures?

A: While there are no sanctions contained expressly within S.J. Res. 58 for the violation of any particular provision, the Congress and the President are expected to act in accordance with the Constitution. By establishing a focus upon two or three critical votes each year relating to the total level of taxation or the size of the deficits, in place of the present piecemeal focus on hundreds of separate spending measures, the amendment will enable the electorate to better identify those members of Congress most responsible for higher levels of spending, taxing, and deficits, with their harmful effects on inflation, interest rates, and unemployment.

Q. So far, Congress has disregarded those statutes that call for a balanced budget. Won't the Congress also find ways to circumvent the provisions of the amendment?

A: It is important to focus on the difference between an ordinary statute and a constitutional amendment. The reason that our civil rights have survived for 200 years is because they are expressly set forth in the Constitution. Without the protection of the Constitution, it is quite likely that many of our individual freedoms would have been eroded over time. Similarly, Congress will find it more difficult to flout the constitutional requirement of budget balance and tax limitation.

Q: Isn't it improper to read economic policy into the Constitution?

A: There are several answers to this question. First, the Constitution already contains numerous items which help formulate economic policy. Among these is the Sixteenth Amendment that made possible the income tax which has fueled rising levels of taxation and government spending. Secondly, the amendment does not dictate any given level of spending or taxing; it only overcomes the bias toward higher spending by eliminating the unlimited access to deficit spending and the availability of automatic tax increases. Under the amendment, Congress would have to vote explicitly to increase, decrease or maintain any given level of government spending. Finally, the amendment only seeks to reimpose prior constitutional limitations on deficits which constituted an "unwritten" rule of budget balance.

Q: Won't the amendment hamstring the ability of Congress to respond to urgent or genuine needs of the American people?

A: No. The amendment is automatically waived for one year in the event of a declaration of war. For other emergencies, the Congress can adopt by a three-fifths vote of the whole membership of both Houses a planned deficit, and, by a majority vote of the whole membership, higher taxes.

Q: Won't it be difficult to agree on the definition of national income and other economic concepts in the amendment?

A: No. The Congress may choose to rely on any of several measures of economic performance, so long as this economic indicator is used consistently from year to year, or that some transition period accompany the substitution of one indicator for another.

Q: S.J. Res. 58 is a balanced budget-tax limitation amendment. How does it work to limit spending?

A: First, the growth in planned receipts from the coming fiscal year cannot exceed the growth of national income for the prior calendar year. Second, the requirement that Congress adopt a "statement" in which outlays do not exceed receipts limits the rise in outlays to the growth rate of national income. Finally, since *actual* outlays cannot exceed *statement* outlays, government spending cannot grow more rapidly than the private economy.

Q: Isn't it impossible to balance the budget during the course of the fiscal year?

A: The amendment does not impose a requirement of actual balance during the fiscal year, only the adoption of a *planned* balanced budget. Although the amendment monitors the flow of actual outlays to insure that actual outlays do not exceed those set forth in the budget statement, actual receipts may exceed or fall below the level set forth in the statement. The amendment imposes no requirement that Congress react to the actual flow of receipts, only to the actual flow of outlays.

Q: Won't Congress just shift more and more of its spending policies "off-budget"?

A: No. Budget outlays include both "on" and "off-budget" items. Section 4 states, "Total outlays shall include all outlays of the United States except for repayment of debt principal."

NOTE ON ADDITIONAL READING

For a detailed statement on the legislative history of the Amendment and definitions of its terms and provisions, see

the official Committee report: "Balanced Budget-Tax Limitation Constitutional Amendment," *Report to the Committee on the Judiciary*, United States Senate, 97th Congress, 1st Session, Report No. 97-151, Washington, D.C.: U.S. Government Printing Office, 1981.

ABOUT THE AUTHOR

Alvin Rabushka is a senior fellow of the Hoover Institution of Stanford University. Since 1978 he has been both an analyst of and participant in the various state and federal constitutional amendment movements to limit taxes or spending and require balanced budgets. In a 1980 essay entitled "Tax and Spending Limits" he proposed a combination balanced budget-spending limitation measure very similar to S.J. Res 58 which appeared in Peter Duignan and Alvin Rabushka (eds.), *The United States in the 1980* (Stanford: Hoover Press, 1980). His most recent book is *The Tax Revolt* (Stanford: Hoover Press, 1982), which analyzes the causes and effects of Proposition 13 in California and similar movements in other states. With economist Robert E. Hall of Stanford, he is co-author of a flat-rate simple income tax reform proposal that has appeared in the *Wall Street Journal*, *Barron's*, and has been introduced by Senator Dennis DeConcini on March 1, 1982, as S. 2147.

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CONSTITUTIONAL ASPECTS OF SJR 58/HJR 350

The Tax Limitation / Balanced Budget Amendment

Antonin Scalia

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PROFESSOR ANTONIN SCALIA has had a distinguished record in public service and academia. Since 1977 he has been Professor of Law at the University of Chicago. During the 1980/81 academic year, he was Visiting Professor of Law at Stanford, University. In early 1977, he was Scholar in Residence at the American Enterprise Institute and Visiting Professor of Law at Georgetown University.

His public service career included appointments as Assistant Attorney General, Office of Legal Counsel, United States Department of Justice (1974-1977), and as Chairman of the Administrative Conference of the United States (1972-1974). Between 1971-1972, he was General Counsel, Office of Telecommunications Policy in the Executive Office of the President.

From 1967 to 1974, Professor Scalia was Professor of Law at the University of Virginia Law School. Prior to that, he was in private practice of law with the firm of Jones, Day, Cockley, and Reavis in Cleveland, Ohio.

Professor Scalia's legal specialties are Constitutional Law, Administrative Law and Regulated Industries.

Currently, he is Editor of *Regulation* magazine, chairman of the American Bar Association Section on Administrative Law and a member of the following organizations: Advisory Council of the American Enterprise Institute's Legal Policy Studies Program; Board of Directors, Center for Administrative Justice, and the Council on the Role of the Courts.

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CONSTITUTIONAL ASPECTS OF S.J. RES. 58/H.J. RES. 350

This opinion addresses what might be termed the constitutional appropriateness of the amendment proposed by Senate Joint Resolution 58—by which I mean not the desirability of the amendment, but its compatibility in form and substance with the existing features of the Constitution. In preparing this opinion I have examined, in addition to the federal and some state constitutions, congressional hearings regarding the Joint Resolution and public commentary both for and against its enactment.

I cannot avoid the disparaging preliminary observation that the issue here addressed is not as important as it might seem. If it were established that the proposed constitutional amendment is 100% incompatible with the substance and structure of the existing Constitution, but also 100% desirable, then I would suppose there is no doubt it should be adopted. The incompatibility would merely demonstrate, one might say, that the Constitution is in greater need of revision than we thought, having become inadequate to modern needs in more than minor detail. Over the past century, many of the states have come to such a conclusion with regard to their state constitutions. State constitutional history of the period displays a constant movement away from the concise, generalized constitution that is the federal model to documents of great detail and complexity—particularly in the budgetary field. The resulting documents lack the elegance of the federal Constitution, but have evidently been thought better to serve the needs of the people.

But in the present case, it does not seem to me the painful choice even presents itself. I find nothing in the proposed amendment that is incompatible, in form, structure or technique, with the existing Constitution. I do not even find it novel in the general subject-matter to which it is addressed—though, as discussed below (p. 9), I would not in any event acknowledge the independent relevance of constitutional tradition (that is, its relevance apart from the argument on the merits of the proposal) insofar as the subject-matter is concerned.

Form. In form, the proposed amendment seems to me entirely in accord with a federal constitutional tradition that favors the expression of broad, fundamental principles but leaves further specification and the elaboration of detail to later usage and experience. Thus, unlike some state constitutions the amendment does not attempt detailed definition of such terms as "receipts," "outlays" or "national income." Such specification has, of course, the advantage of increasing the certainty of application—and the corresponding disadvantages of reduced flexibility and textual clutter. But whatever

may be the merits of a more detailed approach to constitutional draftsmanship, it is surely not the approach reflected in the present federal document.

Thus, the existing Constitution does not attempt to specify what it means "to regulate Commerce with foreign Nations, and among the several States" (Art. I, Sec. 8, cl. 3); or what might be the precise difference between "direct Taxes," which must be apportioned among the states "according to their respective Numbers" (Art. I, Sec. 2, cl. 3) and "Duties, Imposts and Excises," which must be "uniform throughout the United States," (Art. I, Sec. 8, cl. 1); or what might constitute a prohibited "Law impairing the Obligation of Contracts" (Art. I, Sec. 10, cl. 1); or the "Privileges and Immunities of Citizens" which each state is bound to accord to citizens from other states (Art. IV, Sec. 2, cl. 1); or the "Full Faith and Credit" which each state is bound to give to the public acts of every other state (Art. IV, Sec. 1); or the "Republican Form of Government" that the Union is to guarantee to every state (Art. IV, Sec. 4). The Bill of Rights, of course, is filled with such general principles that require further specification, including the prohibition of "establishment of religion," (Amend. I), the guarantee of "freedom of speech" (Amend. I), the prohibition against "unreasonable searches and seizures" (Amend. IV), the prohibition against deprivation of life, liberty or property "without due process of law" (Amend. V), and the prohibition of "excessive bail" (Amend. VIII).

The lack of specificity in some of these provisions is, in my opinion, greater than that which inheres in the present proposal. And it is not, of course, the result of the framers' inadvertence, but of their conscious judgment that details were better left to later elaboration. I might also note, in conclusion on this point, that the present Constitution uses the terms "receipts" and "expenditures" without further definition—in Article I, Section 9, clause 7, which requires "a regular Statement and Account of the Receipts and Expenditures of all public Money" to be published from time to time.

Enforceability. One of the objections sometimes raised against the proposal is that it would not be enforceable, either because the courts would not entertain suits based upon it, or because Congress could easily comply with it technically while evading its purpose and intent—for example, by requiring private institutions to shoulder what were formerly governmental obligations.

As with the matter of form just discussed, so also here: Whatever may be the merits of a different approach (and I, by the way, do not think there are many) it is simply impossible to maintain that judicial enforceability or

practical inevitability are characteristic of the provisions of our present Constitution. Many provision are not actionable in the courts, or can be readily observed to the letter while violated in spirit and intent. The Founding Fathers apparently thought that several hundred legislators are no more likely than five Justices to either violate or evade their oaths of office, and that even the President alone will probably not do so.

Foremost among the judicially unenforceable provisions of the Constitution are many of those going to the heart of democratic government—the election of the people's representatives and the manner of their deliberations. When someone asserts that the constitutionally prescribed manner of election has not been complied with, the Constitution leaves it to the respective houses of Congress, rather than the courts, to resolve the dispute. Article I, Section 5, clause I provides that "each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." By reason of what is called the "political question" doctrine, see *Baker v. Carr*, 369 U.S. 186 (1962), it is inconceivable that the courts would seek to review this judgment. Nor would they look behind either house's determination that the constitutionally required quorum was present (Art. I, Sec. 5, cl. 1), or that a bill passed by the constitutionally required majority or two-thirds vote. Indeed they have even declined to review the validity of state ratifications of constitutional amendments, see *Coleman v. Miller*, 307 U.S. 433 (1939). And there are other "political questions," beyond those pertaining to the elective or legislative process, as to which the courts will not consider it their business to enforce constitutional guarantees—whether, for example, a state has a "Republican Form of Government" (Art. IV, Sec. 4), see *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849), and (perhaps) whether necessary congressional approval for the cancellation of a treaty has been obtained, see *Goldwater v. Carter*, 444 U.S. 996, 1002 (1979) (opinion of Justice Rehnquist).

Other provisions of the Constitution are rendered unenforceable in the courts by reason of the doctrine of standing. This requires, as a condition of judicial jurisdiction, that the person seeking relief have suffered some particularized injury which sets him apart from the citizenry at large. Many constitutional provisions can be violated without giving rise to any such injury—for example, the prohibition against a member of Congress's holding any federal office (Art. I, Sec. 6, cl. 2) see *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974), or most prohibitions applicable to expenditure of federal funds, compare *Frothingham v. Mellon*, 262 U.S. 447 (1923), with *Flast v. Cohen*, 392 U.S. 83 (1968). One constitutional provision that has been held to be judicially unenforceable for this reason is a distinctly budgetary one: the requirement that "a regular Statement

and Account of the Receipts and Expenditures of all public Money shall be published from time to time" (Art. I, Sec. 9, cl. 7). See *United States v. Richardson*, 418 U.S. 166 (1974).

As for the notion that there is no room in our federal Constitution for prohibitions that can be observed to the letter but violated in spirit and intent: That should be sufficiently refuted by reference to the use of the commerce clause to evade the effect of the careful enumeration of federal powers (Art. I, Sec. 8) and of the Tenth Amendment. See, e.g., *Perez v. United States*, 402 U.S. 146 (1971) (use of commerce clause to assert police power over "loan-sharking"). It seems to me that the practical political obstacles to technical evasion of the proposed amendment are at least as high as those applicable to existing provisions of the Constitution. Ultimately, however, the theory of the document is simply that the people's representatives will not ordinarily violate their trust.

Whether or not one considers that theory adequate, it is in any event quite clear that neither judicial enforceability nor practical inevitability has in the past been a criterion for constitutional guarantees.

Substantive Content. The one substantive prohibition of the proposed amendment is contained in Section 4, which disables Congress from requiring the states to engage in additional activities without compensation. Even if this alters existing constitutional doctrine, (which is doubtful), see *National League of Cities v. Usery*, 426 U.S. 833 (1976), it can by no stretch of the imagination be considered inherently "inappropriate" for the federal Constitution. Indeed, it is difficult to conceive of any provision more appropriate than one that delineates the powers or disabilities of the federal government, or of the separate branches of the federal government, vis-a-vis the constituent states. Section 4 would be no more out of place than the Tenth or Eleventh Amendments.

The essence of the proposed amendment, however, consists of the imposition upon Congress of three requirements that neither expand nor constrict its ultimate powers, but prescribe certain legislative procedures to be followed. These are: (1) A requirement for super-majorities applicable to certain votes—three-fifths of the total membership of each house to adopt a deficit budget, and a majority of the total membership of each house (as opposed to what would be the normal rule, a majority of those present) to increase federal receipts at a rate greater than the prior year's rate of increase in national income. (2) A requirement for an actual vote before a specified event may be permitted to occur (viz., the aforementioned increase in federal receipts). (3) A requirement for annual adoption of a budget.

The first of these requirements finds many parallels in the existing Constitution. A super-majority of two-thirds of all members is necessary for either house to expel one of its members (Art. I, Sec. 5, cl. 2), cf. *Powell v.*

McCormack, 395 U.S. 486, 506-07 (1969); a super-majority of two-thirds of the members present is required for both houses to override a presidential veto (Art. I, Sec. 7, cl. 2), see *Missouri Pac. Ry. v. Kansas*, 248 U.S. 276 (1919), for both houses to propose constitutional amendments (Art. V), see *National Prohibition Cases*, 253 U.S. 350, 386 (1920), and for the Senate to convict on impeachment (Art. I, Sec. 3, cl. 6) or to ratify a treaty (Art. II, Sec. 2, cl. 2).

The requirement that Congress must take a vote before a particular event may occur (here, an increase in the proportional rate of taxation) is also not novel. The Constitution currently requires each house to vote its consent before the other may adjourn for more than three days (Art. I, Sec. 5, cl. 4). It likewise requires Congress to vote approval before a federal officer may accept any present, office or title from a foreign state (Art. I, Sec. 9, cl. 8); before a state may impose duties on imports or exports (Art. I, Sec. 10, cl. 2); before a state may enter into any agreement or compact with another state (Art. I, Sec. 10, cl. 3); and before a new state may be admitted to the Union (Art. IV, Sec. 3). In requiring a specific vote for a new level of taxation, the proposed amendment may be regarded as establishing for receipts a specific vote requirement similar to that which is already applicable to expenditures, through Article I, Section 9, clause 7, which provides that "no Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law."

The last legislative requirement established by the proposed amendment—annual adoption of a statement of receipts and outlays—is somewhat different, in that it categorically requires congressional action, rather than merely requiring action if another event is to occur. This has fewer analogues in the text of the present Constitution, but would hardly be unique. Other explicit "legislation-forcing" provisions include the requirement of legislation for a decennial census (Art. I, Sec. 2, cl. 3), the requirement of compensation for Members of Congress (Art. I, Sec. 6, cl. 1), for the President (Art. II, Sec. 1, cl. 7) and for federal judges (Art. III, Sec. 1), and the requirement for legislative specification of districts within which criminal prosecutions are to be brought (Amend. VI). And some legislation is "forced" by necessary implication—for example, the implication arising from the requirement of a Supreme Court (Art. III, Sec. 1) and the Constitution's failure to specify its composition. To be sure, none of this legislative action is required *annually*, but that seems a difference in degree rather than kind. Moreover, as a practical matter the provision that "no Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law" (Art. I, Sec. 9, cl. 7) requires many annual appropriations—and Article I, Section 8, clause 12 prohibits appropriations for the army of more than two years' duration.

Even if these other instances of required legislative action did not exist, however, adoption of an annual budget has become such a regular and inevitable feature of our constitutional practice that it would be captious to object to its inclusion in the constitutional text. Of course the concededly necessary budget has not always been finished in time—but it is the very purpose of this proposed amendment to remedy that acknowledged defect.

Economic Theory. The most vigorous attacks upon the proposed amendment relate to the substantive purpose for which the above discussed legislative procedures (and the accompanying prohibition of Section 4) are imposed. The amendment represents, it is said, an attempt to write a particular theory of economics into the Constitution.

That charge is certainly not valid with regard to the last of the legislative requirements discussed above—the required adoption of an annual budget. Surely that relates to bookkeeping rather than economics. It does not require or induce any particular content in the budget, but merely establishes what is thought to be a technique of sound fiscal management—or more accurately codifies in the Constitution a technique that has long been applied. It represents an entirely compatible addition to the budgetary requirements already contained in Article I, Section 9, clause 7:

No Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

The other two legislative requirements—the requirement for supermajorities and the requirement for a vote on proportional tax increases—are more plausibly subject to the charge of embodying “economic theory.” It is no response, it seems to me, that they do not require any particular economic course (viz., a balanced budget and no increase in taxes) but merely specify the procedures to be followed when that course is to be abandoned. The fact is that through the imposition of such procedures they establish a presumption or bias in favor of that course and against alternative.

One reasonable response is that, while the extraordinary legislative requirements *pertain* to economic measures, they are motivated by political science and governmental theory rather than economics, and their intended effect is to eliminate rather than produce an economic bias or presumption. The proponents of the measure assert it is called for by a widely observed defect in our political process, which tends to produce deficit spending and increased taxes (whether or not they are desirable) when the people as a whole do not want them.

But it seems to me that for purposes of the present question, this discussion is beside the point. Economic principles are not now alien to the Constitution; and even if they were, I would not consider it a departure from any meaningful constitutional tradition to include them.

As to the former point: The document's frequent reference to "Money," "Coin," and "dollars" (Art. I, Sec. 8, cls. 2, 5, 6, 12; Art. I, Sec. 9, cls. 1, 7; Art. I, Sec. 10, cl. 1; Amend. VII) must be deemed an endorsement of the useful economic device of currency, and evidence of a clear bias against those who would return to a barter economy. One can hardly imagine a more clear embodiment of favoritism for the gold and silver standard than the provision of Article I, Section 10, clause 1 that "no State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts." The same clause displays a bias in favor of capitalist economics, when it prohibits the states from passing any "Law impairing the Obligation of Contracts," as does the Fifth Amendment, when it prohibits the taking of "private property . . . for public use, without just compensation." Moreover, the Constitution already contains a procedural device that produces (like Section 2 of the proposed amendment) a bias against increased taxation: While all other legislation may originate in either house, "all Bills for raising Revenue shall originate in the House of Representatives" (Art. I, Sec. 7, cl. 1).

But even if the current Constitution displayed no economic predispositions and even if it is conceded that the proposed amendment does so, it would seem to me strange to call the amendment for that reason contrary to our constitutional tradition. When the bonds of tradition are extended not merely to demand continuity of form and technique (issues of the sort discussed in the earlier portions of this opinion) but also to prohibit expansion of subject matter as well, then the Constitution has become a rigid (and thereby brittle) document indeed. But that cannot be so. The Fifteenth Amendment could not reasonably have been opposed on the simple ground that the Constitution had never sought to dictate voting qualifications before.

From my perusal of the congressional and public debate, I conclude that what has occurred in some instances is the subtle conversion of a small element of the argument on the merits into an entirely separate (and quite erroneous) appeal to constitutional tradition. When a subject is entirely new to the Constitution (as it is asserted, in my view erroneously, the present one is) it does not come with that testimonial of importance, permanence and certitude that a subject already addressed in the document possesses—and therefore greater proof of those necessary qualities may reasonably be demanded. But when this preliminary aspect of the argument on the merits slides into the quite different argument that a subject not hitherto addressed in the Constitution should for that reason alone not be addressed—when it becomes an independent argument based on constitutional tradition—then it seems to me quite plainly wrong.

Antonin Scalia
University of Chicago
Law School

Tax Limitation Research Foundation

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The Foundation conducts and publishes research for the benefit of public policy decision makers.

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PREPARED STATEMENT OF HON. JAMES S. ABENDOL, A U.S. SENATOR FROM
THE STATE OF SOUTH DAKOTA

Good afternoon, Mr. Chairman. I appreciate the opportunity to appear here before you. I am here because of the serious budget situation facing our country.

In its report of baseline budget projections released last month, the Congressional Budget Office indicated that under current law the budget deficit for the current fiscal year will be \$190 billion, and that the situation will rapidly deteriorate until 1989 when we will have a budget deficit of \$325 billion. This should cause all of us in Congress grave concern.

Unless we find a way dramatically to reduce these deficits, government demands for credit will continue to crowd out private borrowing to an ever-increasing extent. The result will be even higher interest rates and a general slowing of the economy.

When Federal Reserve Board Chairman Volcker was before the Joint Economic Committee, I asked him what sort of decline in interest rates we could expect by reducing next year's deficit by \$50 billion. He indicated a drop of two points would not be unlikely. When CBO director Penner was before the Appropriations Committee I asked him about Chairman Volcker's statement and he could find nothing to disagree with. This sort of a drop in interest rates would be one of the best boosts we could provide to the economy and ensure long-term growth.

Huge deficits also contribute in a major way to our current record trade deficits. By keeping the dollar overvalued relative to foreign currencies, we are in effect giving a tremendous subsidy to foreign industry at the direct expense of our own industrial and agricultural sectors.

The situation demands immediate action. Last year we spent nearly \$90 billion on interest; this year we will spend well over \$100 billion. If we don't take action soon, compounding interest costs are going to push us beyond the point of no return.

Even more frightening is the fact that deficits of this size mean we are entering uncharted economic territory. CBO's baseline projections indicate that between 1984 and 1989 deficits will average 5.4% of GNP. This compares with 1.7% for the period 1965 to 1981. The longer we let this trend continue, the greater the risk of seriously undermining the confidence of both the public and the financial community.

Because of these sorts of serious ramifications, I co-sponsored S. J. Res. 5, the balanced budget/tax limitation amendment back in February 1983. Since that time, the need for this amendment has grown more pressing, and that's why I'm here before you today.

Already 32 States have recognized the need for this amendment and have called for a constitutional convention. Of the remaining 18 States which have not acted, 13 have had such a resolution introduced in at least one house of their legislatures. If only two more States call for a convention, Congress will be forced to act.

While I have heard some concerns expressed about a "runaway convention," it should be noted that most of the State resolutions, if not all of them, would limit the scope of such a convention to the issue of balancing the budget.

There is some concern with Section 5 of the resolution, which provides that the amendment should take effect beginning with the second fiscal year after ratification. Frankly, I don't think it would be realistic to start the clock running now and expect a balanced budget in two years. However, I do think that once such an amendment is proposed to the States and the ratification process begins, the "handwriting will be on the wall" and Congress will have a considerably longer period of time in which to develop a prudent strategy for compliance which we should be doing anyway. In addition, the amendment contains a safety valve by which it could be waived by a two-thirds vote of both houses of Congress.

In light of the ability of special interests to reward Members of Congress who spend and punish those who attempt to exercise spending restraint, the Constitutional amendment would constitute a long-term check on the institutional bias of Congress always to spend more and more. However, the fact that it is likely to be at least several years before any such amendment could become part of the Constitution means that we have to do something in the interim to keep the budget crisis from getting further out of hand. For this reason I intend to introduce legislation to put more teeth into the budget process and commit the federal government to making measured progress in reducing deficits.

In a nutshell, this legislation would set out a schedule of mandatory deficit reduction targets. The first would require

the FY 85 deficit to be some \$29 billion below the FY 83 level. Further reductions would be mandated for each succeeding year. Congress would have the first chance to comply with these targets, provided it focused primarily on spending reductions for at least the first two years. If Congress fails, the President could propose in any year rescissions of budget authority up to 10 per cent of any program, project or activity. If still more reductions prove necessary in order to meet the targets, further rescissions would be required across-the-board. Congress would get a second chance to modify these rescissions in any way before they would take effect. In other words, Congress would have both the first and the last opportunity to work its will, but one way or another, the target would be met.

Under this plan, if Congress is willing to take the bull by the horns and do its job, there would be no need for the President ever to propose a rescission; however, the knowledge that the deficit would be reduced one way or another would spur Congress to deal with the problem in the first instance and according to its own priorities pending the time when a Constitutional amendment mandating a balanced budget could take effect.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SUBCOMMITTEE ON THE CONSTITUTION
OF THE SENATE JUDICIARY COMMITTEE
REGARDING S.J. RES. 5,
PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION
TO LIMIT FEDERAL SPENDING AND BALANCE THE BUDGET

Presented by
Keith W. Eckel, President, Pennsylvania Farmers Association

March 6, 1984

Mr. Chairman and members of the Subcommittee, I am pleased to present the views of the American Farm Bureau Federation regarding S.J. Res. 5, a proposed amendment to the United States Constitution that would require a balanced federal budget.

Farm Bureau is the nation's largest agricultural organization representing farmers and ranchers in forty-eight states and Puerto Rico. Our policy is the result of a comprehensive policy development program that involves the active participation of our producer members at the county, state and national levels.

Over three million member families belong to the Farm Bureau. Their livelihood rests primarily in agriculture, but their interests extend to other areas such as tax and budget issues that affect the economic well-being of farmers and ranchers. For this reason Farm Bureau has strong policy support for a constitutional amendment such as S.J. Res. 5. The following policy was adopted by voting delegates of member State Farm Bureaus at the 65th AFBF annual meeting in Orlando, Florida, in January:

Monetary and Fiscal Policies

"We support a constitutional amendment to require the federal government to operate on a balanced budget each year. Only in extreme emergencies could this requirement be waived with the concurrence of the legislative and executive branches of government. A balanced budget should not be achieved by levying new taxes or increasing tax rates.

"We support a constitutional amendment to restrict the spending authority of the federal government to a realistic percentage of the gross national product (GNP)."

As you can see, our members are specific about the type of constitutional amendment(s) that they support to require the Congress and the President to balance the budget and eliminate deficits. Another message is loud and clear: The budget must be balanced by spending cuts, not tax increases.

Farm Bureau members worked diligently in the 96th and 97th Congresses to enact a balanced budget amendment. We were pleased to see S.J. Res. 58 pass the Senate, but our pleasure was short-lived. We watched with disappointment as the balanced budget amendment failed to pass the U.S. House of Representatives after a successful discharge petition drive. Despite our disappointment, we continue to put forth our strong support for the amendment.

Farm Bureau support has been evidenced not only in the United States Congress, but in state legislatures. Currently, 32 states have adopted constitutional convention calls to draft a balanced budget amendment. Thirty-four states must approve convention calls before Congress is required to call a convention. Efforts in the state legislatures have been successful; in fact, so successful that attempts have been made in two states, Iowa and Maryland, to repeal the constitutional convention calls approved earlier by those state legislatures.

We need a balanced budget amendment. Our members believe that if states have adopted balanced budget requirements and if farmers and ranchers must act responsibly with regard to their own finances, then it is possible for the federal government to act in the same responsible way. Arguments have been made to the contrary by those who believe that it is impossible for the federal government to operate on a balanced budget and, indeed, that it is not desirable to do so. With the prospect of \$200 billion deficits in the foreseeable future, we would like to think that opponents of the balanced budget amendment will come to realize that such an amendment is necessary. So far, the Congress has not taken the responsibility for achieving a balanced budget either through statute or a constitutional amendment. Clearly, an amendment to the Constitution is needed to provide a permanent remedy.

The dismal statistics are well known: The federal budget has been balanced only once in the past twenty years. The deficit surpassed \$100 billion for the first time in 1982, whereas only twenty years before, the federal budget itself was only in the neighborhood of \$100 billion. By 1987, the federal government is projected to reach its first trillion dollar budget. To say that these numbers are alarming is an understatement, but an even bigger problem rests in the size of federal government spending in relationship to Gross National Product. Using 1962 as a reference point, federal spending then was 19.5 percent of GNP. By 1982, the percentage had grown to 23.8 and reached a high of 24.7 percent in 1983. Figures have not been finalized for 1984. Taxes continue to take a bigger share of the nation's resources, too. In 1962, federal receipts were 18.2 percent of GNP. By 1982, the share had risen to 20.2 percent. These numbers indicate that both federal spending and the federal tax burden continue to increase. The long-term effect is to choke economic recovery and risk re-inflation and continuing high interest rates.

We believe that S.J. Res. 5 is an amendment that can work. The first two sections of the amendment provide for a balanced budget and a tax limitation. In conjunction, these two sections do have the effect of limiting federal spending. In addition, safeguards are provided so that states will not be strapped with any undue financial burdens passed along by the federal government. Also, a provision has been made to override the balanced budget requirement of the amendment by a 3/5th vote of the United States Congress.

While we believe that S.J. Res. 5 is a good amendment, it would be strengthened by the addition of a specific, rather than implied, spending limitation. We recommend the addition of a provision to limit federal spending to a realistic percentage of the gross national product. Without it, the size of the federal government could continue to increase in relation to the private sector. Without a ceiling on the percentage ratio of federal spending to GNP, spending restraint may not be sufficient to balance the budget.

Farm Bureau re-emphasizes this point: We do not support tax increases to balance the budget and reduce deficits. Spending must be reduced by reform of federal entitlement programs, including agriculture. A statutory spending freeze in conjunction with federal entitlement reform and a constitutional balanced budget amendment would go a long way toward solving the economic problems of the nation, particularly in agriculture.

As Farm Bureau indicated in a similar hearing before the Senate Judiciary Committee in 1981, we believe that the balanced budget amendment is a step in the right direction and illustrates real progress toward fiscal responsibility.

Thank you for allowing us to present testimony.

Appendix A

1984 Monetary and Fiscal Policies
American Farm Bureau Federation

"Farm Bureau strongly supports the continued reduction in the size of the federal government to stop inflation and increase productivity. This is our top priority. Balancing the federal budget will not be possible unless there are further substantial cuts in federal spending.

"Farm Bureau supports an across-the-board freeze on all federal spending at the previous year's total appropriations level with the exception of interest payments on the national debt and an adequate defense. This freeze and spending limitation shall take priority over all other federal spending policies adopted by Farm Bureau.

"Farm Bureau supports a freeze-and-fix program to reform all federal entitlement programs. The plan would require a three-year freeze, or moratorium (no increase), in all federal cost-of-living adjustments. If Congress does not fundamentally fix the entitlement programs within the three-year period, the freeze would continue until Congress accomplishes necessary reforms.

"We support legislative or constitutional changes to give the President line-item veto power in appropriations bills.

"We support a constitutional amendment to require the federal government to operate on a balanced budget each year. Only in extreme emergencies could this requirement be waived with the concurrence of the legislative and executive branches of government. A balanced budget should not be achieved by levying new taxes or increasing tax rates.

"We support a constitutional amendment to restrict the spending authority of the federal government to a realistic percentage of the gross national product (GNP).

"Off-budget federal outlays, including federal credit programs, should be brought on-budget as direct federal outlays. The Federal Financing Bank should be abolished.

"The goal of monetary policy should be general price level stability. The Federal Reserve System should conduct a sustained, long-term monetary policy which will minimize inflation and deflation of prices. Should the Federal Reserve System fail to maintain sound discretionary monetary policies, we will support legislation to instruct the Federal Reserve System to achieve a specified rate of growth in the stock of money consistent with real economic growth, productivity and general price level stability. The Congress of the United States should conduct an audit and special public hearings on the Federal Reserve System.

"Recognizing that a significant portion of federal spending is incurred through government contracts, competitive bidding should be encouraged. The use of 'cost-plus' contracts should be minimized."

American Federation of State, County and Municipal Employees

1625 L Street, N.W., Washington, D.C. 20036

Telephone (202) 429-1000

Telex 89-2376

April 24, 1984

Dear Senator:

In the near future, the Senate may consider S.J.Res. 5, the constitutional amendment which requires an annual balanced Federal budget. I am writing to urge you to oppose this destructive legislation which would undermine the democratic principle of majority rule and destabilize the economy to the point of generating a new Great Depression.

S.J. Res. 5 is Unworkable

Federal budgeting is a complex and evolving technical process that cannot, and should not, be constrained within the straightjacket of several immutable paragraphs in the U.S. Constitution. The attempt in S.J.Res. 5 to restrict the Federal budget through the use of legally ill-defined terms such as "outlay", "expenditure" and "national income" is totally unworkable.

Passage of this amendment would undoubtedly cause a proliferation of "creative accounting" practices designed to circumvent its provisions -- with a consequent weakening of the Congressional budget process. S.J.Res. 5 would spur the use of off-budget programs, loan guarantees and quasi-public enterprises, and would encourage the Federal government to shift the cost of certain Federal services and responsibilities onto the private sector.

Due to the complexity of the Federal budget and appropriation process, this proposal would be virtually impossible to enforce without endangering the separation-of-powers. The ambiguity of the budget terms used in S.J.Res. 5 would surely be the subject of much litigation, as would any alleged failure of Congress or the President to carry out the provisions of the amendment. Such litigation could stop or disrupt vital government functions and would transfer a great deal of authority over the Federal budget to unelected Federal judges and away from the President and the Congress.

S.J.Res. 5 is Dangerously Destabilizing

If the intent of S.J.Res. 5 could be implemented despite the problems of ambiguous language and creative accounting, the constitutional amendment's effect could be the advent of a severe depression. Because of the Federal government's responsibility for promoting economic stabilization, inflexible balanced budget requirements are impractical and dangerous.

A requirement of an annual balanced budget inhibits the operation of the automatic stabilizers currently built into the Federal budget. Prohibiting budget deficits, or making it politically difficult to get them authorized, would force the government to raise taxes and/or cut outlays to eliminate a recession-induced deficit. However, such actions would push the economy even deeper into recession. A study done by the Council of Economic Advisors in 1979 showed that if the Federal budget had been balanced during our '74-'75 recession, then in 1975: (1) real GNP would have plunged by 12 percent rather than 2 1/2 percent, and (2) unemployment would have shot to 12 percent rather than 8.5 percent.

In 1982, AFSCME attempted to quantify the economic consequences of the Balanced Budget Amendment by preparing an econometric simulation using the highly respected Data Resources Incorporated (DRI) model of the U.S. economy. The results of the simulation was a prediction of economic devastation.

- The number of unemployed would increase by 2.65 million, pushing the jobless rate back into double digits.
- The Gross National Product would decline by nearly \$200 billion a year, resulting in a six percent decline in the standard of living for the average American.
- State and local tax revenues, due to a drop in employment and output, would be reduced by an estimated \$50 billion a year, necessitating unprecedented increases in property and sales taxes and dangerous cuts in basic services such as fire, police and education.

The results were based on 1982 assumptions which projected deficits less than half of what they are now. If a balanced budget amendment were applied to current deficits, the Federal spending cuts and economic dislocation would be much more severe. As to how much more severe, we cannot tell at this moment. However, we have contracted with DRI for a new study, the results of which we will be able to share with you in a few weeks.

It should also be noted that in 1982, Senator Pat Moynihan conducted a study of the impact of a balanced budget amendment using the Wharton econometric model. The results from that study also projected huge increases in unemployment and sharp declines in GNP. It should also be noted that all the studies showed that the elimination of the deficit has only a negligible effect on inflation.

As the economy deteriorated as a result of the workings of S.J.Res. 5, Congress might eventually muster the super majority needed to override the balanced budget requirement. However, the resulting delay would aggravate the economic decline and subject the American people to a great deal of unnecessary social and economic suffering. Moreover, making an unbalanced Federal budget hostage to a minority in Congress runs counter to our nation's basic democratic principles of majority rule.

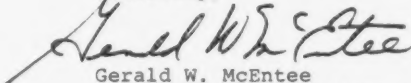
S.J.Res. 5 Demeans the Constitution

This brings me to my final point. The enactment of S.J.Res. 5 would be demeaning to our nation's most sacred document, the U.S. Constitution. Our constitution has been adhered to because our founding fathers had the wisdom to limit its restrictions to certain immutable principles, mostly involving individual liberties. By limiting their restrictions, they were able to establish a system of government flexible enough to survive two hundred years of enormous commercial, technological and culture change.

S.J.Res. 5 runs contrary to our constitutional tradition. It would place a permanent restriction of the Federal government on a strictly economic matter which does not affect any individual's liberty or property. It also sets up the Constitution as a barrier to rational economic policies and makes it a tool by which a minority in Congress can deny full funding to programs overwhelmingly supported by the American people, such as Social Security and Medicare.

In short, S.J.Res. 5 sets up a confrontation between the Constitution and the general welfare of the American people. S.J. Res. 5, therefore, not only threatens our economy, but more importantly our democratic way of life. As such, it deserves to be soundly rejected by Congress.

Sincerely,


Gerald W. McEntee
International President

THE BALANCED BUDGET AND THE FEDERAL COURTS
BY PROF. GEORGE D. BROWN, BOSTON COLLEGE LAW SCHOOL

Introduction and Summary

This testimony relates directly to one of the questions which will arise if a Balanced Budget Amendment is adopted: what might be the role of the courts in enforcing such an amendment? However, as the recent Senate debate illustrates, this question has emerged as one of the central issues in the argument over whether to adopt such an amendment at all. The bulk of this testimony will examine the role of the courts in an effort to allay fears of a "flood of litigation" which would paralyze the budgetary process and, indeed, the entire federal government.

The principal themes of the testimony are as follows:

* Many of the predictions about extensive litigation are simply unsupported assertions which reflect an underlying hostility to the concept of a Balanced Budget Amendment rather than the results of any sustained legal analysis.

* The types of specific disputes most frequently invoked as candidates for judicial review would almost certainly be dismissed under the "political question" doctrine.

* The Senate floor debate on standing was based on serious misconceptions of current law. In particular, the most recent Supreme Court case on taxpayer standing was not even discussed.

* If the issue of judicial enforcement is to be addressed at all in the text of any amendment, this should be done in the form of an authorization to Congress to deal with the issue as part of any implementing legislation.

1) The Spectre of Judicial Activism

For years the principal "legal" argument against a Balanced Budget Amendment has been the contention that a provision of this nature - embodying economic policy - did not belong in the Constitution, whatever its short term merits might be. During the 97th Congress a somewhat different legal argument was advanced to demonstrate the evils of the proposal: any such amendment would generate a flood of litigation which would paralyze the budgetary process and, indeed, the entire federal government. Yet this argument consists frequently of little more than a

bare assertion. For example, on July 28 Senator Moynihan read into the Congressional Record an open letter from over 170 economists opposing the amendment. One of the arguments was as follows:

"Interpretation of the Constitution -- including this Amendment, if approved -- is a function of the judiciary. We believe it unwise to involve the courts in the interpretation of economic theory and economic policy. It often takes years to develop a judicial construction sufficiently thorough to comprehend the full range of issues, arguments, and conflicts inherent in a new legal situation. Moreover, it often takes years to adjudicate the cases that arise to test the scope and application of a new legal concept. To be effective, economic policy must be flexible, and respond to changing economic conditions, institutions, and relationships; bringing the courts into the policy process would severely undermine the necessary flexibility." 128 Cong. Rec. S9271 (July 28, 1982).

While these general statements are valid as generalities they rest on the assumption that courts would jump into the fray, seizing every opportunity to become deeply involved in "the interpretation of economic theory and economic policy."

Many Senators apparently shared the assumption. For example, on July 19 Senator Cranston, opposing the concept of a Balanced Budget Amendment, offered the following observations:

"The resolution opens judicial review of all actions taken to carry out the mandate of the resolution. Courts could rule on the constitutionality of a budget. Congress could find itself subject to an injunction of a Federal court directing that certain fallacious economic assumptions in the congressionally adopted 'balanced statement of outlays and receipts' be revised and the statement accordingly revised.

"What is to prevent an angry Member of the Senate or the House from filing suit against the budget on such grounds? Or citizens?" 128 Cong. Rec. S8566 (July 19, 1982).

Legal experts could readily be found to support such dire predictions. Senator Baucus produced a 1980 analysis of a Balanced Budget Amendment by the New York City Bar Association's Committee on Federal Legislation. Its Chairman described as "inevitable" judicial involvement in "the day-to-day workings of the budget process." He stated the Committee's view that "[t]he amendment will undoubtedly result in a host of lawsuits - annually recurring - challenging particular expenditures and appropriations and every attempt to raise or lower taxes." 128 Cong. Rec. S9551

(August 2, 1982). (A 1982 letter from the Committee to Senator Baucus addressing the specific issues of standing and political questions is discussed in sections 2 & 3 infra.)

Treating the matter of extensive judicial involvement as a foregone conclusion might be warranted if "the law" was clear that suits under the amendment would be heard and decided. However, examination of the areas which would be most relevant to this litigation leads to the very opposite conclusion: not only is "the law" in such areas as standing and political questions far from settled, but whatever clarity does emerge suggests that plaintiffs could rarely get a federal court to even reach the merits of their cases. In other words, the spectre of judicial activism is a specious argument against the amendment.

2) Budget Issues as Political Questions

When amendment critics do get down to the specific lawsuits which might be spawned, perhaps the most frequently cited examples are challenges to either the economic forecasts underlying the statement of receipts or the choice of a definition of national income. E.g., 128 Cong. Rec. S8744 (August 4, 1982) (Senator Bradley). Yet such issues may well be non-justiciable "political questions."

—Although the political question doctrine's contours are far from well defined - indeed, some have questioned its very existence - the notion that the separation of powers requires that the political branches have final say over some matters has a continuing attraction. In the 1979 decision of Goldwater v. Carter, 444 U.S. 906, the plurality opinion of the Court disposed of the issue -- whether the President could terminate a treaty -- on political question grounds. Although Justice Powell would not have found a political question, he offered a formulation of the basic inquiries of political question analysis which may be helpful in the Balanced Budget Amendment context: "(i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of government? (ii) Would resolution of the question demand that a court move beyond areas of judicial expertise? (iii) Do prudential considerations counsel against judicial intervention?" 444 U.S. at 998.

Let us apply Justice Powell's inquiries to a challenge to the economic assumptions underlying the required "statement of receipts and outlays . . . in which total outlays are no greater than total receipts." First, a court might well find a clear textual commitment to the political branches. Under Section 1 of the amendment Congress is empowered to adopt the statement, to amend it and, under limited circumstances, to exceed and to waive it. Furthermore, the same section commits to the Congress and the President the duty of ensuring that actual outlays do not exceed those in the statement. Thus a court might conclude that matters pertaining to the contents of the statement, in particular the economic assumptions which underlie it, are committed to the other branches.

Justice Powell's second and third inquiries lead even more strongly to a conclusion that courts should stay out. Economic forecasting seems to lie "beyond areas of judicial expertise" and in elaborating on the meaning of prudential concerns, Justice Powell stressed the need to avoid situations where "multifarious pronouncements by various departments on one question" could embarrass the government and undermine mutual respect among the three branches.

About the best that the amendment's critics can do on the political question front is to say that examples of the doctrine are rare, and that it probably would not bar all litigation. The New York City Bar Association Committee's July 1982 letter to Senator Baucus states, in part, "While it is very difficult to characterize political questions in general terms, we seriously doubt that all questions arising under the proposed budget-balancing amendment would be held to be political. . . ." 128 Cong. Rec. S9555 (August 2, 1982). That is something less than an iron-clad guarantee of floods of litigation. (The letter does not cite, let alone analyze, the several opinions in Goldwater v. Carter.)

3) Misunderstanding Standing.

Many Senators who participated in the recent debate on a Balanced Budget Amendment alluded to suits which would be brought by a vast group of potential plaintiffs including Congressmen, taxpayers and citizens.

Examination of the Supreme Court's treatment of plaintiffs' "standing" to sue - particularly decisions of the post-Warren Court - leads to the conclusion that most of these plaintiffs would be thrown out of court summarily on the ground that they lacked standing.

Although the concept of standing is frequently described as "confused" - primarily by those who would like to see it abandoned - some elements of the doctrine are relatively clear. In particular the Court has consistently rejected claims of citizen standing. Recent decisions emphasize the constitutional underpinnings of this refusal to allow citizens to function as private attorneys general: Article III's limitation of the judicial power to cases and controversies requires that a plaintiff allege injury in fact, which, in turn, requires that the plaintiff assert more than "the generalized interest of all citizens in constitutional government," Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 217 (1974).

Justice Rehnquist recently summarized the Court's position on citizen standing as follows:

"This Court repeatedly has rejected claims of standing predicated on 'the right, possessed by every citizen, to require that the Government be administered according to law. . . .' Such claims amount to little more than attempts 'to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government.'"

Valley Forge Christian College v. Americans United for Separation of Church and State, 102 S.Ct. 752, 764 (1982) (citations omitted).

As to suits by members of Congress, the standing issues become more complex, but clear indications of how the courts would handle such cases can be found. Most of the caselaw on (federal) legislators' standing has developed in the Court of Appeals for the District of Columbia Circuit. During the early 1970's that court appeared to be developing a broad concept of legislator standing, relying on plaintiffs' interest in the legislative process, e.g., Mitchell v. Laird, 488 F.2d 611 (D.C. Cir 1973). However, in recent cases the court has recognized that such a doctrine could turn legislators into roving attorneys general able to challenge any governmental illegality. The current standard appears to

be that a legislator must show that his ability the vote has been nullified, see, e.g., Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977).

Even under this standard, it is possible that legislators would have standing to challenge some executive breaches of the amendment. However, to the extent their grievances were with congressional action, or inaction, it is not clear whether individual legislators would ever have standing. Chief Judge Wright, in a 1979 concurring opinion, stated that "Where Congress itself, and not the Executive, renders an individual legislator's vote ineffective, the courts have no role." Goldwater v. Carter, 617 F.2d 697, 712 (D.C. Cir.), vacated, 444 U.S. 996 (1979) (concurring opinion). In sum, legislators might well have standing to enforce the amendment in limited circumstances. The extent of such circumstances is not clear, but to suggest it resembles a flood is neither accurate nor helpful.

The most extensive discussion of standing decisions during the Senate debate occurred in connection with the question of taxpayer suits. Many Senators discussed the decision in Flast v. Cohen, 392 U.S. 83 (1968), which dealt with taxpayer suits against federal officials for violations of the Constitution. Senators emphasized Flast's double nexus test - that "a taxpayer will be a proper party to allege the unconstitutionality only of exercises of the taxing and spending clause of Art. 1; § 8, of the Constitution," and that plaintiffs must "show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. 1, § 8."

The notion that Flast was the controlling precedent in this area was reinforced toward the close of the debate by frequent references to testimony before the House Judiciary Committee by Professor Lawrence Tribe of the Harvard Law School. Because of the source and because of the prominence which it assumed in the debate, the relevant portion of this testimony is set forth in its entirety:

"7. Constitutional provision should not foster an Imperial Judiciary.

Constitutional provisions affirmatively empowering government action, and those securing specified individual rights against government, may be judicially enforced without necessarily requiring assertions of judicial power to manage the fiscal operations of government. Judicial enforcement of the proposed Balanced Budget Amendment, in contrast, would necessarily plunge judges into the heart of the taxing, spending, and budgetary process. As Senator Gorton put it in the other chamber several days ago, this 'threat that we are vastly increasing the power of the Judiciary - that we are inviting the Judiciary into the business of writing budgets for the people of the United States - is a threat [even] more grave than [that] of . . . Presidential impoundment . . .,' Cong. Rec. S9393 (July 29, 1982). He noted the 'paradox . . . that a number of Members who have most fiercely opposed the intervention of the judiciary into [busing, prayer, and other 'social issues'] should not have proposed an amendment which is likely . . . to add to the legislative authority of the Federal courts.' Id.

The Senate nonetheless defeated Senator Gorton's proposed limit on judicial review under the Balanced Budget Amendment - a narrow limit, at that - by a vote of 51 to 45. Cong. Rec. S9407 (July 29, 1982). Before that vote, Senator Heflin had noted that not even the Gorton Amendment could keep 'State courts from getting involved.' Id. at S9400-01. Senator Hatch had expressed the view that, if 'Congress itself ignores' the Balanced Budget Amendment, 'Members of Congress would - and should - "have standing [on the basis of] being foreclosed from performing their duties as Members of that body," leading to what "may [be] a justiciable issue." Id. at 9404. Senator Hatch opposed the Gorton Amendment because it could change all that. Senator Thurmond had expressed fear that the Gorton Amendment could also 'have the unfortunate effect of precluding a legitimate lawsuit by a citizen with judicial standing who wants to challenge the constitutionality of the failure to Congress to obey the provisions of Senate Joint Resolution 58.' Id. at 9406. Without an explicit limit on judicial review, the Senate was reminded, would-be recipients of outlays halted pursuant to the Balanced Budget Amendment could surely go to court to challenge any such cut-off, See Cong. Rec. S9405 (Sen. Bumpers); and federal taxpayers claiming that Congress was raising and spending taxes in violation of the new Amendment's express restrictions on the spending and taxing powers of Congress could certainly obtain standing under Flast v. Cohen, 392 U.S. 83, 103-04 (1968). See Cong. Rec. at S9394 (Sen. Gorton). In the face of Senator Bumpers' unrebutted suggestion that defeat of the Gorton Amendment would virtually assure a degree of judicial intrusion well beyond that contemplated by the Senate Report (at 62-66), see Cong. Rec. at S9405, the Senate defeated the Gorton alternative.

The dilemma for the sponsors of the Balanced Budget Amendment is an enormous one. If it were indeed as 'self-enforcing and self-monitoring' as they assert, Senate Report at 66, then the need for it - a need premised entirely upon the supposed necessity of 'external constraint,' id. at 42, 75 - would vanish. If, as seems more plausible, it is not meaningfully 'self-enforcing,' see Parts 3 & 4 *supra*, then there is no way to make it work without compelling the jud-

iciary to take on the task of budget-master, creating evils at least as great as those the budget-balancers hope to solve."

128 Cong. Rec. S9618 (August 3, 1982).

It should be noted that the only case which Professor Tribe cites in his discussion of standing is Flast v. Cohen. However, on January 12, 1982 the Supreme Court dealt with the issue of taxpayer standing in Valley Forge Christian College v. Americans United for Separation of Church and State, 102 S.Ct. 752. A majority held that taxpayers lacked standing to challenge actions by the executive branch in disposing of surplus government property to a school with religious affiliations. The Court found that the plaintiffs could not satisfy the first Flast nexus because they were challenging executive, rather than congressional action. The court reasoned, in the alternative, that the action in question was not an exercise of the spending power but of the separate power to dispose of the property of the United States.

Valley Forge is important in several respects. First, by refusing to extend Flast to the area of challenges to the executive it cuts off many of the suits which were predicted during the senate debate. Second, the thrust of the opinion is clearly hostile to Flast, suggesting that the majority is laying the ground work for overruling that case. Justice Rehnquist began his analysis not by citing Flast at all but by discussing at some length the 1923 case of Frothingham v. Mellon 262 U.S. 447. He characterized Flast as an "exception" to the Frothingham principle, which must be applied rigorously. Finally, the dissenting opinions of both Justice Brennan and Justice Stevens stress that Flast should best be read as establishing a special rule for standing in the context of asserted violations of the First Amendment. According to Justice Brennan, "the two-pronged 'nexus' test offered by the Court, despite its general language, is best understood as 'a determinant of standing of plaintiffs alleging only injury as taxpayers who challenge alleged violations of the Establishment and Free Exercise Clauses of the First Amendment,' and not as a general statement of standing principles." Id. at 777. Thus neither the Tribe testimony nor those who relied upon

it discussed at all the most recent and highly relevant Supreme Court decision in the area of taxpayer standing. Neither did the letter from the New York City Bar Association to Senator Baucus.

4) Should the Amendment Deal With the Role of the Courts?

As the preceding analysis suggests, predictions of a flood of litigation seem largely unfounded. On the other hand, several Senators stated during the recent debate that the courts ought to be available, in some instances, to enforce the balanced budget process. See, e.g., 128 Cong. Rec. S9399 (July 29, 1982) (Senator Heflin); see S. Rep. No. 97-151, 97th Cong., 1st Sess. 65-66 (1981). Whatever view one takes of the matter it would seem that Congress should, as the Senate did, address the role of the courts during consideration of the amendment itself. There are four basic options:

- (1) Bar judicial enforcement in the text of the amendment;
- (2) Specify and limit judicial enforcement;
- (3) Say nothing, leaving the issue to be worked out by the courts;
- (4) Authorize Congress to deal with the issue in implementing legislation.

The first option is clearly undesirable. As indicated, some judicial enforcement may well be necessary to keep the process honest in extreme circumstances, such as a decision by Congress and the President to ignore it altogether. It is interesting to note that Senator Gorton considered such a bar, but rejected it. See 128 Cong. Rec. S9394 (July 29, 1982).

Instead, Senator Gorton proposed an example of the second option: limiting the availability of judicial enforcement to cases involving the meaning of terms in the amendment or cases arising under any implementing legislation. Id. at S9392. The problems, with any delineation approach are twofold. To begin with there is the question whether it embraces the "right" class of cases: those which the spirit of the amendment suggests ought to be adjudicated. Furthermore, whatever categories of cases are included are frozen into the Constitution. If subsequent experience suggests that the lines so drawn are either too broad or too narrow Congress' hands are tied.

The Judiciary Committee opted for the third approach. The Committee reasoned that doctrines such as standing and political questions would prevent any flood of litigation, and that the courts would be available to solve any major problems which did arise. However, the second conclusion does not follow from the first. The "big" cases, for example, an outright thwarting of the amendment by Congress and the President, might be thrown out as non-justiciable. Alternatively, if a flood of litigation does materialize, any effort by Congress to deal with it would run squarely into the complex and unresolved issues of Congress' power over federal court jurisdiction.

These critiques of the first three options lead to the conclusion that language in the amendment authorizing Congress to deal with the issue may be the best solution. It addresses the problem, unlike the Committee's approach, but retains flexibility, unlike the first two options. A possible version of such language is section 6 of the Bumpers substitute amendment, debated on August 3.

"Section 6. Except to the extent provided in legislation enacted by the Congress after the effective date of this article, the judicial power of the United States shall not extend to that part of any case, controversy, claim, or defense arising under, or based in whole or in part on, this article, nor shall that part of any case, controversy, claim or defense arising under, or based in whole or in part on, this article be entertained or considered by any court of the United States or of any State." 128 Cong. Rec. S9671 (August 3, 1982).

This language can be criticized as blocking all litigation unless Congress acts. However, it is likely that Congress would consider judicial issues as part of any initial implementing legislation. Certainly alternative formulations can be devised. For example, one might paraphrase Article III and provide that the judicial power shall extend to cases and controversies arising under the amendment with such "exceptions and regulations" as Congress may provide. (However, this could, in turn, lead into debates over the extent of the exception power!) The important question is whether the fourth option is the best approach. In my view, it is.

Conclusion.

The issue of the role of the courts under a Balanced Budget Amendment raises questions for which there are no easy answers. That is precisely why I take issue with the facile critics who predict confidently a flood of litigation. In the end, one must analyze the cases and exercise a lawyer's judgment as to what the courts will do. In my judgment, it is more likely than not that the courts will turn away any army of plaintiffs, should such an army materialize. Nonetheless, authorizing Congress to deal with judicial enforcement may be desirable, more in order to permit litigation than to prevent it.

STATEMENT
on
THE BALANCED BUDGET/TAX LIMITATION AMENDMENT (S.J. Res. 5)
for submission to the
CONSTITUTION SUBCOMMITTEE
of the
SENATE JUDICIARY COMMITTEE
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
*Dr. Richard W. Rahn
March 6, 1984

Summary

Our present budget process is plagued by the asymmetry that exists between powerful special interest groups and the general taxpayer. The voices of special interest groups are loud and clear, but the effect of each program, taken individually, on the taxpayer is miniscule. This encourages Congress to pile up one program after another. As a result, the general taxpayer is saddled with high tax rates and looming deficits.

The extraordinary expansion in the scope of activities considered appropriate for federal intervention has increased enormously the number of people who benefit from federal largesse. The number of transfer payment beneficiaries has been growing at an alarming rate relative to the number of taxpayers. This makes it increasingly more difficult to control expenditure growth.

This spending bias is reflected in the failed attempts to limit such growth by statute. The problem is that we are becoming a nation that is at war with itself. On the one hand, as taxpayers, we can see the devastating effects of excessive taxation. On the other hand, we have become a nation wherein large segments of the population have become increasingly dependent upon some form of transfer payment.

To resolve this dilemma, a new set of fiscal norms needs to be firmly established. This is the purpose of the Balanced Budget/Tax Limitation

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Amendment. It contains a set of Constitutional constraints that helps to deflect the self-destructive dynamics of our piecemeal and "me too" approach to the budget.

While all amendments of this type are susceptible to implementation problems, we support S.J. Res. 5 because it restrains both deficits and tax growth. Balancing the budget by itself is not enough, for that would not restrain the political pressure for higher spending and could lead to successively higher taxation. However, S.J. Res. 5 limits growth in taxes by requiring that the increase in taxes in any given fiscal year be no greater than the prior year's growth in national income. It thus ends automatic increases in the tax burden.

The Need for Fiscal Discipline

Over the past decade, it has become increasingly clear that existing congressional budget procedures are incapable of curbing the growth of federal spending and credit programs. Despite massive deficits, Congress continues to allow federal spending to rise at excessive rates. In fact, the real growth of federal expenditures continues at rates comparable to the Carter era. With real government expenditures for FY 1985 projected to grow at 3.3 percent, it stretches the imagination to believe that excessive spending has been tamed.

These trends are not a recent phenomenon. Over the past century, public spending has been rising at an annual rate almost 2 to 3 percent faster than the Gross National Product (GNP). While this trend is noteworthy in itself, its ramifications can be shocking. According to some estimates, if we extrapolate the historical trend into the future, federal expenditures will approach 40 percent of GNP by the year 2000 and 100 percent by 2036. By this timetable, federal expenditures for 1984 would be in the neighborhood of 24 percent, which means that the FY 1983 share of 24.7 percent was ahead of schedule!

These ominous trends suggest that our federal budget process contains serious defects; in particular, a systematic bias that leads to runaway

spending and excessive taxation. Curiously, this problem was diagnosed over 200 years ago. Having recognized the need for government, the Founding Fathers were equally, if not more, concerned with controlling the failures of government. For the most part, these failures spring from the bifurcated decision-making on spending and taxing. Spending decisions are typically made separate from and without regard to tax decisions. This means that dominant majorities and powerful minorities can push through programs that create substantial benefits for themselves but inflict substantial costs on the rest of the electorate.

James Madison recognized this problem as "the violence of the faction". In this case, a well organized minority can profit by legislation that disperses the costs of a program over a large group of people. The former has every incentive to organize since its per capita benefits are high, and the latter fails to organize since per capita costs are low or insignificant. Indeed, while many members of the large group may fail to take notice, others can be duped by the minority's propaganda. In the words of Mark Twain, "The free traders won the debates but the protectionists seem to win the votes."

Unfortunately, spending bias is not limited to special interests, because broad based coalitions have similar incentives as long as they can pass a disproportionate share of the costs onto other citizens. This explains, in part, the virtual explosion of entitlement programs. For example, Social Security and Medicare benefits have been boosted by Congress because voters had few difficulties in accepting prospective payments that would exceed their own contributions. In this case, perhaps unwittingly, the voters of one generation have shifted a sizable portion of costs onto later generations. This bias is apparent from the continual deferral of decisions on automatic entitlement spending. With the ratio of privately employed people to transfer payment recipients declining from 5 to 1 in 1950 to only 1.3 to 1 in 1983, the necessary reform of the programs is all but stymied.

The Founding Fathers attempted to contain these problems by establishing a political obstacle course--the two houses of Congress and the veto power of the President. This system seemed to have worked well as total

government spending remained below 10 percent of GNP until about the late 1920s. There was a widespread belief that government should be limited and that danger arose from its growth. Grover Cleveland maintained that people should support government, the government should not support the people. And Woodrow Wilson maintained that the history of liberalism was a history of restraints on government.

In addition, balancing the budget was considered part of our unwritten constitution. Excessive public debt was considered dangerous. When deficits were incurred because of war or recession, efforts were made to repay them expeditiously. Twenty-eight years of surpluses followed the deficit years of the Civil War. Ten years of surpluses followed the deficit spending of World War I. But since 1950, the budget has been in deficit in 28 of 33 years.

In modern times, the ethos of limited government and balanced budgets has disintegrated. The expenditure biases, foretold by the Founding Fathers, now infest the political system. In part, this has been encouraged by the fact that it has been unnecessary for Congress to make evident the consequence of its spending decisions by voting for tax increases. Tax increases have occurred automatically as a consequence of the progressive tax structure and inflation. However, spending extravagance has also been the result of the Keynesian legacy, which has made it acceptable policy for governments to run deficits. Both factors have been abused by Congresses that were eager to generate votes in the short run, irrespective of the long run consequences.

In view of the mounting problems caused by runaway spending, Congress has attempted a number of solutions. The budget process was reformed in 1974 in order to increase accountability. There have also been statutory attempts to limit expenditure growth. However, it is evident that these solutions have failed. As a consequence, we believe, along with many other Americans, that stronger medicine is necessary. At this point in our history, constitutional fiscal norms are needed to restore budgetary discipline. This is the purpose of a tax limitation-balanced budget amendment.

The Balanced Budget-Tax Limitation Amendment - S.J. Res. 5.

As presently formulated, the amendment represents a simple and straightforward attempt to legislate a limit on federal spending. The measure would establish strict limits on Congress' ability to engage in deficit spending and would prevent further perverse interaction between the urge to spend and bracket creep.

The key provisions of the amendment are to be found in the first two sections.

The first section requires that Congress plan for a balanced budget and that Congress and the President make sure that actual spending does not exceed planned spending. Note that nothing is said about assuring that actual receipts equal (or exceed) planned receipts. This is because an administration has some control over spending, but it cannot exercise the same degree of control over receipts, which are affected much more by cyclical conditions in the economy. If a boom develops, actual receipts will exceed planned receipts; in a recession, receipts will drop. The first section does not rule out such automatically produced surpluses or deficits. This is one of the most important subtleties of the amendment. It avoids a rigidity that would be intolerable and harmful. It requires no year-by-year budget balance, but balance over the length, or course, of business cycles. By itself, the first section would not directly limit the growth of government. It would simply require that taxes and spending go up together.

The second section contains the most important element. It provides that planned receipts may not increase from one year to the next by a greater percentage than the increase in national income. Under section one, planned spending must be less than or equal to planned receipts, and actual spending must be less than or equal to planned spending. Hence, limiting receipts limits spending.

S.J. Res. 5 is sufficiently flexible to allow Congress to override some of its provisions, for example, if a prolonged recession or threat of war necessitates deficit spending. For such reasons, an unbalanced budget can be adopted. It must, however, be adopted explicitly by a vote on that

subject alone. Congress can accept a deficit if three-fifths of the full membership of both houses feel such a deficit is necessary. Also, by regular statute, Congress and the President may approve an increase in taxes greater than the growth rate of national income.

It would be naive to think that such an amendment is a cure all for our fiscal problems. In this respect, the amendment is far from an ironclad guarantee. In truth, fiscal discipline depends upon the will of the people and their elected representatives. If such conviction is not mustered, the forces behind tax and expenditure growth will continue to dominate.

There are a number of ways the amendment could lead to difficulties. First, Congress and the President could secure the necessary majorities to push through both tax and expenditure increases. Second, it may lead to a bias in favor of tax increases, since the required majority for tax increases is smaller and a large portion of the budget is stacked with "uncontrollable" outlays. Third, the pressures to balance the budget could give added incentive to move programs off budget for the purpose of achieving illusory budget balance. In a related manner, federally guaranteed loans, which are excluded from the amendment's control, could then be used to provide financial support. New York State, which has a balanced budget requirement, finds itself precisely in this situation. Finally, the proposal does not provide the President with any spending control mechanisms beyond what he already possesses. He is still constrained by a limitation on his impoundment and rescission authority.

Upon closer inspection, most of these reservations pose relatively minor problems. While it is true that the override provisions allow for both tax and spending increases, the amendment makes it more difficult to do so, compared to the present system. The three-fifths majority requirement for deficit spending affords more protection than is now in existence, and an increase in taxes greater than the growth of national income has to be voted upon explicitly.

The objection that much of the budget is already uncontrollable and that there is little room for budget discipline, misses the central reason for such an amendment in the first place. The whole point of a balanced

budget amendment is to instill or force a set of behavioral norms upon the workings of Congress. In this way, the logjam of vested interests may be broken in favor of the general public. As a consequence, we would expect that the amendment would cause Congress to increase the range for budget cutting. This is precisely the goal, to gain control over the "uncontrollable".

The other objections refer to possible "escape routes" that Congress might pursue if such an amendment is enacted. However, no scheme is ever foolproof. Given the ingenuity of wily politicians, a certain amount of gamesmanship is to be expected. However, many of the off budget "tricks" are now becoming known to the public, and this avenue may be eventually closed. In any event, the amendment should be construed as a means to repair our presently porous budget process. In the words of James Buchanan, a professor of economics at George Mason University and a foremost proponent of constitutional approaches to the budget process, "Patching a hole in a fence doesn't exclude the cattle from straying elsewhere, it just fixes it in one spot". Lastly, nothing in the amendment precludes the President from gaining increased powers over the budget by the use of other tools, one of which, the line-item veto, would be an excellent complement to it.

Finally, the amendment's most important feature is that legislators will find it in their own interest to honor it. This point has been illustrated by the experience of legislators in states that have adopted amendments limiting state spending. Prior to the enactment of such amendments, they had no effective defense against lobbyists urging spending programs. Now they do. They can say: "Your program is an excellent one; I would like to support it, but the total amount we can spend is fixed. To get funds for your program, we shall have to cut elsewhere. Where should we cut?" In the words of Milton Friedman, the effect is to force lobbyists to compete against one another rather than, as now, against the amorphous and poorly represented body of taxpayers.

Conclusion

A little more than 3 years ago, the American electorate voted overwhelmingly for a President who promised to reduce the size of government. Despite this mandate and the public opinion polls that continue to show that American people prefer spending restraint to tax increases as the way to reduce the deficit, our elected officials have instead enlarged the scope of government. This makes it clear that statutory reform has not worked. We cannot depend upon the will of Congress. Consequently, it is time for binding constraints upon congressional behavior. The Tax Limitation/Balanced Budget Amendment offers an opportunity for such discipline.

PREPARED STATEMENT OF ARCHIBALD COX
CHAIRMAN, COMMON CAUSE

Mr. Chairman. Members of the Committee. May I first express my appreciation of this opportunity to testify in opposition to House Joint Resolution 350 and other so-called balanced-budget amendments. I sought the opportunity because of the depth and strength of my conviction that these proposals, characterized as signs of fiscal responsibility, are in truth acts of constitutional irresponsibility because they trivialize our basic charter and thus threaten to substitute cynicism for the honor and respect of the people, upon which the vitality of the Constitution depends.

I can summarize quite shortly the considerations leading to this conclusion.

1. The proposed amendment would damage the Constitution by introducing matter irrelevant to its fundamental and traditional purposes.

The original Constitution, including the amendments heretofore adopted serve three basic functions: (a) they allocate the powers of government among the three branches and between the Nation and the States; (b) they fix the machinery of the federal government; and (c) they protect the most fundamental individual rights, such as life, liberty and property, free speech, fair trials, and equal justice under law.

The amendment proposed by H.J. Res. 350 serves none of these purposes, and no purpose so fundamental. The proposed amendment would state a budgetary policy that nearly everyone agrees may be sound under one set of circumstances and wholly unsound under others. The amendment itself would provide that the policy it declares may be ignored whenever three-fifths of the Senate and House choose to ignore it.

The Constitution lives, Mr. Chairman, in the hearts and minds of the American people. The Constitution is effective because the people honor and support it. They honor and support the Constitution, even amid controversial decisions, because the Constitution is confined to enduring fundamentals upon the essence of which we are all agreed.

To adopt an amendment upon an altogether different subject irrelevant to the basic tradition threatens to diffuse and dilute the honor and support upon which all else depends. To adopt an amendment that may be set aside at the will of three-fifths of each house would compound the damage to our most basic institution.

2. Adoption of the Joint Resolution would damage the Constitution by proposing a fiscal declaration designed primarily for election politics.

Congress at this very time is approving huge deficits. There is fear of political reprisals at the November polls. The aim now is to offset the danger by a limited declaration of fiscal responsibility.

Never in all our history have we adopted an amendment to the Constitution for such heavily political purposes. Never in all our history has Congress proposed so heavily political and little substantive an amendment.

So to trivialize the Constitution and the processes of amendment would undermine, and thus tend to destroy, the constitutionalism upon which our liberty rests.

3. The "balanced budget" amendment threatens severe damage to the Judiciary.

No one can be sure whether or how far the proposed constitutional amendment, if adopted, would be enforceable by the courts. With only the language and subject matter to guide me, I would think it likely that allegations of violation would be held to give rise to a non-justiciable "political question." But the declarations of some sponsors and at least one vote in the Senate suggest that judicial sanctions are intended.

If that is the effect, Mr. Chairman, then there is an additional strong reason for opposing this resolution. It would thrust the Supreme Court of the United States, the lower federal courts, and even the State courts into the heart of fiscal policy, appropriations and expenditures.

Other witnesses have called attention to the ambiguities, uncertainties, and unanswered questions raised by the language of the proposed amendment. I shall not take your time to repeat them. I do wish to emphasize four points.

First, the proposed amendment would thrust the judiciary into fiscal policy, appropriations and expenditures without precedent, experience or other judicially-manageable standards to guide its decisions. Few judges have expertise in such matters. Judicial review of the constitutionality of legislation is acceptable because the judges owe responsibility to a body of law, growing, changing, but also continuous and binding. Even in the beginning, there was more background or a more specific purpose against which to interpret other constitutional guarantees. Under the proposed amendment and in a new and untried field, the courts would have no such guidance. Inexpert as they might be, they would be forced in the guise of interpretation to make fiscal and appropriations policy.

Second, so far as I can see, neither the proposed amendment nor any existing body of law gives the courts the slightest guidance concerning the kinds of relief they should grant upon finding a violation. This is much more than a technical question. There is potential for judges in various courts all over the country hamstringing in various ways the operations of government.

Third, the courts will be called upon to intrude into an area that Congress and the President have long regarded as their exclusive domain. However acceptable judicial intrusion into fiscal and appropriations policy may look in the abstract today, there is bound to be criticism, resentment, and resistance when

the intervention on heretofore non-justiciable questions actually occur.

Fourth, the combined impact of the first three factors is bound to be injury to the prestige and authority of the courts, and then to effectiveness of the judiciary in preserving the ancient framework of American government and constitutional liberties of citizens.

In sum, Mr. Chairman, I submit that H.J. Res. 350 should not be adopted because it proposes to add an amendment foreign to the fundamental and traditional purposes of the Constitution; because its political function trivializes the Constitution and the processes of amendment; and because it casts the judiciary loose on an utterly uncharted sea.

I recognize that what I have said may not persuade everyone. To those who are unconvinced but who also feel the responsibility of preserving our constitutionalism I submit that such a radical and risky break with ancient and tested tradition should not be made in a rush. There should be longer more deliberate study, more complete hearings and fuller debate than can be squeezed in before the end of the current session. Not to take the time to work the questions through would still further trivialize the Constitution.

STATEMENT
on behalf of the
NATIONAL ASSOCIATION OF REALTORS®
on the
CONSTITUTIONAL AMENDMENT ON THE BUDGET
to the
SENATE JUDICIARY COMMITTEE
by
DR. JACK CARLSON
Executive Vice President and Chief Economist

This statement is on the behalf of the more than 600,000 members of the National Association. We greatly appreciate the opportunity to present our views on the issue of a Constitutional Amendment to require fiscal restraint and tax limitation.

The NATIONAL ASSOCIATION OF REALTORS® has actively supported the need for a Constitutional Amendment on the Budget in the last Congress and again this year. At the latest meeting of the National Association's Board of Directors a Resolution was adopted to stress again the need to work for deficit reduction now and the establishment of a Constitutional Amendment on the Budget for the future.

The growing concern of the membership of the National Association is evidenced by the increasing number of State Associations of REALTORS® which have recently joined the National Association in a concerted effort on a Constitutional Amendment on the Budget. The State Associations efforts have focused on efforts calling for a Constitutional Convention on a Budget Amendment since Congress seemed stalled on the issue.

Since November the REALTORS® in eight states (67,841 members) have joined the effort to the extent possible in their area: Washington, Vermont, Minnesota, Maryland, Michigan, Montana, Iowa and West Virginia. This concerted effort, with the National Association helping, has an opportunity of success this year in Washington and Montana. Both Maryland and Iowa have successfully repelled efforts to repeal the call by their states for a Constitutional Convention.

While establishment of a Constitutional Amendment is important, it is crucial that the Amendment contain the best language, therefore:

Recommendations

o It is essential that the Senate and the House of Representatives and the States be given the opportunity to address the issue of federal fiscal restraint through consideration of an Amendment to the Constitution.

o Since it is within your power to make that opportunity possible we urge you to write and report such a measure.

o It is important that if such an Amendment of the Constitution of the United States is to be submitted for State approval it should be the best possible amendment.

o It should make those changes in the charter of our Federal Government needed to restrain the growth and size of the Federal Government deficits.

o Since the common label of the Amendment is "The Tax Limitation", the special three-fifths voting requirement for adopting deficits should be extended to approving additional taxes in order that the Amendment not only work more effectively for spending restraint but also work for tax limitation.

o As S.J. Res. 22 stresses, the President should be required to submit a budget each year that represents his best judgement of how each year's budget could be balanced - even if he recommends a different budget.

o As the Amendment passed the Senate in the last Congress, a provision requiring a three-fifths vote to increase the debt gave the Amendment real teeth. We urge that this provision not be dropped this year.

o Action on this proposed Constitutional Amendment should not be interpreted as a substitute for urgently needed action on the currently planned and projected deficits for FY1985 and beyond. Nor should it be considered as a cover-up for the bad economic policies adopted in recent years. Changes in high deficits and high spending policies of the current Administration and Congress and past Administrations and Congresses must be made now and during the next several years before the time the Constitutional Amendment could be available to create an influence for better policies.

Discussion

We are now confronted, under current policies, by high and rising deficits that will continue to take three-quarters or more of the net savings of the American people and business. This has never occurred prior to 1982 in the peacetime history of the United States or among other industrialized countries.

FIGURE 1

CENTRAL GOVERNMENT DEFICITS AS PERCENTAGE OF
GNP AND PRIVATE SAVINGS AND RESULTING REAL INTEREST RATES 1982

	Central Government Deficit as a Percent of GNP <u>1/</u>	Central Government Borrowing as a Per- cent of Net Private Domestic Savings <u>2/</u> of individuals and business	Real Long-Term Interest Rates <u>3/</u>
United States	4.3	77	5.3
United Kingdom	2.8	58	4.6
Japan	5.8	41	3.9
France	2.8	40	3.8
Germany	2.6	29	3.4

1/ Source: International Monetary Fund.

2/ Source: International Monetary Fund. Net private savings is defined as household saving plus gross savings of business enterprises, subtracting depreciation charges and other capital consumption allowances.

3/ Computed assuming the rate of growth of money supply is equal in all countries.

These huge federal deficits are causing over one-half of current long-term interest rates (see FIGURE 2) and are forecast to cause an even higher proportion if deficits are not reduced.

FIGURE 2

CURRENT CAUSE OF HIGH MORTGAGE INTEREST RATES
(Fourth Quarter 1983)

	Percentage Points	Percent of Total
Fiscal Policy - Deficit	7.6	57
Current Crowding Out	1.1	8
Inflation fears — Future Crowding Out	6.5	49
Monetary Policy Money Growth	5.8	43
ACTUAL INTEREST RATE	13.4	100

Source: Testimony of Jack Carlson debating the Treasury Department on "The Relationship Between Federal Deficits and Interest Rates", October 21, 1983. The estimates are based on an extension and update of several studies and additional empirical analysis by Martin S. Feldstein and Otto Eckstein, "The Fundamental Determinants of the Interest Rate", The Review of Economics and Statistics, November 1970, pp. 363-375.

We believe that it should be made more difficult for the federal Government to create such deficits and that a Constitutional Amendment is required to do that. We view this proposal not, as some argue, as a detail of fiscal policy that is inappropriate to be in the Constitution; but rather as a tilt of the Government's decision processes in this key area. The goal is to make more difficult the adoption of decisions that (1) have such profound and injurious results for the nation and (2) have proven so hard to avoid or reverse.

We recognize that deficits may and should temporarily appear from time to time, particularly during recessions. However, such recessions have often been caused by an inappropriate mix of fiscal and monetary policies -- loose fiscal policy which leads to tight monetary policy. This mix of policies results in rising interest rates which cripple the interest sensitive sectors of the economy and thereby dampen the overall level of economic activity. By making it more difficult to adopt loose fiscal policy, we believe the adoption of the proposed constitutional change would result in wiser economic policies and fewer and less severe recessions in the future.

We view the currently projected deficits as an urgent current matter which must be addressed now before a Constitutional Amendment could take effect. They must be addressed by the President and the Congress within the current decision processes. The NATIONAL ASSOCIATION OF REALTORS® has for four years petitioned and continues to petition the Congress and the President to take the actions to reduce and eliminate the deficits and we have presented specific recommendations to accomplish this. We see the Constitutional Amendment as, hopefully and preferably, useful in avoiding a recurrence of the current problem. However, assuming that Congress does approve an effective Constitutional Amendment before it has acted decisively on the projected deficits, we expect that it would create significant pressure for action on the deficits as more and more States act favorably on a Constitutional Amendment.

We urge the adoption of the language offered in 1982 by Senators Armstrong and Boren and adopted that year by the Senate to make votes to increase the debt ceiling also subject to a three-fifths voting requirement.

Clearly this would make the Amendment more effective in deterring deficits. Without this amendment it would deter only planned deficits; with it the proposal would deter both planned and actual deficits.

We also urge that the purpose of the Amendment would be far better served if the President is required to submit a budget that represents his best judgement of how each year's budget could be balanced. It should not preclude the President from recommending a budget that is not balanced. We believe that the Amendment prepared by Senator DeConcini would accomplish this important improvement. Our recommendation reflects our view that if the Congress is placed under a greater necessity of producing a balanced budget the President should be given the opportunity to present his recommendations on how to do it and should also have the responsibility of aiding and facilitating the Congress's carrying out of its new Congressional role. This aid to Congress is consistent with the well established responsibility of the President, since 1921, to prepare and propose the Federal Government's budget.

We believe that S.J. Res. 5 would make it relatively easier to support increased federal spending by raising taxes or allowing inflation to drive taxes up faster than people can earn money to pay those taxes. This is because the Resolution requires only a majority of all of the membership of both Houses of Congress to adopt such tax increases, contrasted to a three-fifths vote to approve a deficit or a public debt ceiling increase.

Another factor that tilts the outcome under S.J. Res. 5 toward tax increases is the ease and speed with which tax code changes can increase actual revenues, contrasted with the longer lead time required to lower outlays through spending changes. Much spending is contracted or otherwise obligated or programmed months or years before actual spending occurs. Hence the requirement of a three-fifths vote to approve a deficit or a debt increase, when only a majority is required to increase taxes, makes it more likely that when there is need for a speedy "deficit reduction" the decision will be to increase taxes.

We believe that much of the potential value of a Constitutional Amendment to inspire confidence in the Federal Government's future fiscal responsibility will not be realized if the method used to deter deficits is to increase the tax burden rather than to bring federal spending under control.

If a consistently difficult voting requirement were in the Constitutional Amendment for adopting deficits, approving debt ceiling increases, and raising taxes, the Amendment would better assure a bias in favor of reducing and controlling spending as the preferred way to prevent deficits.

STATEMENT OF THE NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

Mr. Chairman, The National Association of Wholesaler-Distributors appreciates this opportunity to present for the record our views regarding S.J. Res. 5, The Balanced Budget-Tax Limitation Constitutional Amendment.

NAW is a federation of 119 wholesaler-distributor trade associations (see Appendix A), with an aggregate membership of 45,000 firms operating at approximately 150,000 locations throughout the nation. Wholesaler-distributors provide the critical link in the marketing chain between manufacturers and all product users, and are generally small, closely-held, family-owned businesses providing stable, well-paying jobs to over 5 million Americans.

NAW members distribute and wholesale every conceivable consumer and industrial product, and account for approximately 60 percent of the industry's total sales volume--approximately \$1.4 trillion in 1983.

NAW strongly supports S.J. Res. 5 and urges the Congress to act expeditiously in submitting The Balanced Budget-Tax Limitation Amendment to the states for ratification.

NAW firmly believes that achieving a balanced federal budget is absolutely imperative. The huge present and projected federal deficits represent a clear and present danger to economic recovery now underway and place the long-term health of the nation's economy in grave peril.

Today, real interest rates are higher than the historical norm, and we are convinced that large federal deficits play a lead role in keeping them there. In addition, we cannot overstate our concern that the current "put-it-on-plastic" approach to spending threatens to rekindle the destructive fires of inflation and place interest rates on a sharp upward swing. Unless decisive action is taken to curtail current excesses, the strong economic recovery we enjoy today will soon pass into history, and the American people will be forced to relive the pain and anxiety of recession and the high unemployment economic decline brings.

Sadly, NAW sees little if any evidence to suggest that the balanced budget ideal is any more than a dream when viewed in the context of the budget process now in place. The last 24 years have brought us red ink budgets 22 times and in recent years, annual deficits have risen to record levels both in actual dollars and as a percentage of the gross national product. Today, the national debt stands at approximately \$1.4 trillion, and the required annual expenditure for servicing the debt is the third largest item in the federal budget.

In the face of such evidence, it is difficult to imagine that Congress will ever exhibit the level of discipline necessary to put our fiscal house in order in the absence of a constitutional amendment requiring a balanced federal budget.

Section 1 of the constitutional amendment proposed by S.J. Res. 5 clearly addresses the balanced budget imperative by requiring the Congress, prior to each fiscal year, to "adopt a statement of receipts and outlays for that year in which total outlays are not greater than total receipts." Further, Congress would be permitted to adjust its statement provided that revised outlays did not exceed revised receipts.

The constitutional amendment proposed by S.J. Res. 5 does not, however, eliminate Congress' ability to run a deficit. On the contrary, Section 1 would allow "a specific excess of outlays over receipts" provided that a three-fifths majority of the whole number in both Houses agreed by "a vote directed solely to that subject." Additionally, Section 3 provides Congress with the authority to waive the requirements of the article if a declaration of war is in effect.

These provisions recognize the need for flexibility while, at the same time, advancing the notion that deficits should be the exception rather than the rule, occurring under only the most compelling of circumstances.

NAW does believe, however, that congressional accountability for any decision to run a deficit would be appropriately enhanced were the language of Section 1 to make such a decision specifically contingent upon a recorded vote in both Houses.

While achieving a balanced federal budget is critically important, so too is the mix of policy options chosen to secure that result. NAW believes strongly that the appropriate course is through reductions in spending and not via tax increases.

NAW believes that federal spending, which has grown to equal approximately 24 percent of the gross national product, is far too high, and that the nation would make a critical mistake were it to "chase" runaway federal spending with ever-increasing taxes in order to prevent deficits. Every dollar taken from a wage earner or business for government spending is one less dollar that individuals or businesses can spend in a manner that would bring the greatest benefit to that taxpayer.

Past experience has shown, most recently with the enactment of the Tax Equity and Fiscal Responsibility Act (TEFRA), that tax increases will not solve the deficit problem. But even if they did, one must recognize that tax increases take investment capital out of the private sector which exacerbates the "crowding-out" problem, raises interest rates, erodes profits and cash flow, and increases the dependence of wholesaler-distributors and others upon borrowed funds for operations, growth, expansion, and job creation.

As a result, NAW believes that a constitutional amendment requiring a balanced federal budget must also restrain federal spending and place strict limits on what the government can take in taxes.

By limiting the rate of growth in total receipts no more than the rate of increase in national income, Section 2 of the amendment proposed by S.J. Res. 5 takes an important step with respect to limiting the growth of receipts and, when coupled with Section 1, spending as well.

However, NAW regrets that the proposed amendment would permit Congress to provide for an increase in total receipts in excess of the rate of increase in national income by a mere majority vote of the whole number in both Houses. We believe that a recorded three-fifths majority of the whole number of both Houses would be more likely to ensure that such additional increases, like deficit spending itself, would occur rarely and only under the most compelling circumstances.

Again, Mr. Chairman, NAW strongly supports S.J. Res. 5. The constitutional amendment it proposes would bring us balanced federal budgets through spending and tax restraint, thus providing a key element in our effort to sustain economic recovery and secure a healthy, vibrant, and growing economy for our and future generations of Americans.

Thank you for the opportunity to present our views.

APPENDIX A

National Wholesaler-Distributor Organizations Affiliated with the National Association of Wholesaler-Distributors

Air-conditioning & Refrigeration Wholesalers
American Dental Trade Association
American Jewelry Distributors Association
American Machine Tool Distributors Association
American Supply Association
American Traffic Services Association
American Veterinary Distributors Association
Amusement & Vending Machine Distributors Association
Appliance Parts Distributors Association, Inc.
Associated Equipment Distributors
Associated Wire Rope Fabricators
Association of Footwear Distributors
Association of Steel Distributors
Automotive Service Industry Association
Aviation Distributors & Manufacturers Association

Bearing Specialists Association
Beauty & Barber Supply Institute, Inc.
Bicycle Wholesale Distributors Association, Inc.
Biscuit & Cracker Distributors Association

Ceramic Tile Distributors Association
Ceramics Distributors of America
Copper & Brass Servicenter Association
Council for Periodical Distributors Association
Council of Wholesale Distributors
American Institute of Kitchen Dealers

Distributors Council, Inc.
Door & Hardware Institute
Drug Wholesalers Association

Electrical-Electronics Materials Distributors Assn.
Explosive Distributors Association, Inc.

Farm Equipment Wholesalers Association
Flat Glass Marketing Association
Fluid Power Distributors Association, Inc.
Food Industries Suppliers Association
Foodservice Equipment Distributors Association

General Merchandise Distributors Council

Health Industry Distributors Association
Hobby Industry Association of America

Independent Medical Distributors Association
Institutional & Service Textile Distributors
Association, Inc.
Irrigation Association

Machinery Dealers National Association
Material Handling Equipment Distributors Association
Monument Builders of North America-Wholesale Div.
Motorcycle Industry Council
Music Distributors Association

National-American Wholesale Grocers' Association
National Appliance Parts Suppliers Association
National Association of Aluminum Distributors
National Association of Chemical Distributors
National Association of Container Distributors
National Association of Decorative Fabric Distributors
National Association of Electrical Distributors
National Association of Fire Equipment Distributors
National Association of Floor Covering Distributors
National Association of Manufacturing Opticians
National Association of Marine Services, Inc.

National Association of Meat Purveyors
National Association of Plastics Distributors
National Association of Service Merchandising
National Association of Sporting Goods Wholesalers
National Association of Textile & Apparel Distributors
National Association of Tobacco Distributors
National Association of Writing Instrument Distributors
National Beer Wholesalers Association
National Building Material Distributors Association
National Business Forms Association
National Candy Wholesalers Association
National Commercial Refrigeration Sales Association
National Electronic Distributors Association
National Fastener Distributors Association
National Food Distributors Association
National Frozen Food Association
National Grocers Association
National Independent Bank Equipment & Systems Assn.
National Industrial Belting Association
National Industrial Glove Distributors Association
National Lawn & Garden Distributors Association
National Locksmith Suppliers Association
National Marine Distributors Association
National Paint Distributors, Inc.
National Paper Trade Association, Inc.
National Plastercraft Association
National Sash & Door Jobbers Association
National School Supply & Equipment Association
National Solid Wastes Management Association
National & Southern Industrial Distributors Associations
National Spa and Pool Institute
National Truck Equipment Association
National Welding Supply Association
National Wheel & Rim Association
National Wholesale Druggists' Association
National Wholesale Furniture Association
National Wholesale Hardware Association
National Heating & Airconditioning Wholesalers
North American Wholesale Lumber Association, Inc.

Optical Laboratories Association
Outdoor Power Equipment Distributors Association

Pet Industry Distributors Association
Petroleum Equipment Institute
Power Transmission Distributors Association, Inc.

Safety Equipment Distributors Association, Inc.
Scaffold Industry Association
Shoe Service Institute of America
Specialty Tools & Fasteners Distributors Association
Spring Service Association
Steel Service Center Institute

Textile Care Allied Trades Association
Toy Wholesalers' Association of America

United Pesticide Formulators & Distributors Association

Wallcovering Distributors Association
Warehouse Distributors Association for
Leisure & Mobile Products
Watch Materials & Jewelry Distributors Association
Water and Sewer Distributors Association
Wholesale Florists & Florist Suppliers of America
Wholesale Stationers' Association, Inc.
Wine & Spirits Wholesalers of America, Inc.
Wood Heating Alliance
Woodworking Machinery Distributors Association

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m.
Wednesday, May 19, 1982

Remarks of David A. Stockman
Director of the Office of Management and Budget
before the
House Subcommittee on Monopolies and Commercial Law
Committee on the Judiciary

Mr. Chairman, I am here today to express the President's and the Administration's support for H.J. Res. 350, the balanced budget/tax limitation amendment to the Constitution.

Amending the Constitution of the United States of America is a serious matter, and we have arrived at our position only after extensive consideration of the underlying issues and the consequences such an amendment would have.

During the time when it appeared possible that a balanced budget could be achieved by the Congress under the leadership of a President firmly committed to reducing spending, there was little forward motion on the balanced budget/tax limitation amendment. But in recent months, when a balanced budget has become a more distant goal and increased taxes are being presented more and more often as a way to reduce deficits, the interest in the amendment has been rekindled, both in the Congress and in the country as a whole.

The truth of the matter is that in spite of continual efforts to limit spending, the Federal budget is out of control.

This is not the consequence of the Administration's tax policies or its defense policies. Administration policies restore tax burdens and defense spending to levels measured against GNP that prevailed during the long period of national productivity and national defense strength from 1946 to 1973.

The tax policies in the FY 1983 budget hold the government's claim on income to about 19 percent of GNP -- slightly above the level of the post-war period. Similarly, the defense share of GNP will stabilize -- even after the full effects of the build-up are felt -- at slightly over 7 percent of GNP. This is lower than the share during the 1946-73 period.

	<u>Historic Level 1946-73</u>	<u>Long-Run Reagan Policy</u>
Tax Share of GNP.....	18.1	18.6
Defense Share of GNP.....	8.9	7.3

In fact, the driving force behind the present fiscal disequilibrium is non-defense spending, which grew steadily during the 1950s and 1960s, explosively during the 1970s, and still carries forward enormous residual momentum despite our efforts to reduce its growth.

Non-Defense Spending as a Share of GNP

<u>Period</u>	<u>Percent</u>
1946-54.....	8.5%
1955-64.....	9.3
1965-76.....	13.0
1977-81.....	16.7
1982-83.....	16.7
1984-85 (baseline).....	17.4

As can be seen from the above, non-defense spending growth accelerated rapidly during the past decade. Outstripping the growth of both inflation and real output by a wide margin, its real claim on GNP grew by 4.4 percentage points from 1971 to 1981.

This rapid growth occurred in almost all categories of non-defense spending.

Discretionary spending for education, employment and training, social services, law enforcement, community development, and the like grew from \$44 billion in 1970 to \$148 billion in 1981. This represented an 11.3 percent annual rate of growth, compared to after-tax income growth of 10.2 percent.

The medical and means-tested entitlements grew even more explosively, rising from \$17 billion to \$91 billion in less than a decade. This amounted to a real growth of 9 percent a year, compared to real national income growth of 3 percent.

Finally, all non-defense entitlement spending, including Federal pensions and social security, simply sky-rocketed out of control. In 11 years, annual outlays increased by the staggering sum of one quarter of a trillion dollars.

Explosion of Non-Defense Spending Growth

During 1970s (in billions)

<u>Budget Component</u>	<u>1970</u>	<u>1981</u>	<u>Growth Rate</u>	
			<u>Nominal</u>	<u>Real</u>
Discretionary.....	\$44	\$148	11.3%	3.3%
Medical and Means-tested Entitlements.....	17	91	16.2	8.8
All Non-defense Entitlements	60	292	15.2	7.8

Were this a temporary aberration, it might be concluded that the passage of time, the emergence of more responsible

fiscal attitudes and a better political climate could cure the problem. But a look at future budget projections and current spending control proposals pending in the Congress indicates that a more powerful and reliable fiscal control mechanism is needed.

Under current law, the Congressional Budget Office estimates that non-defense entitlements will cost \$359 billion in fiscal 1983, and \$1.2 trillion over the next three years. That huge sum embodies the essence of the fiscal problem and deficit crisis now upon us. Yet in the face of triple digit deficits and non-defense entitlement spending reaching 1/2 trillion a year in fiscal 1987, the House Budget Committee last week proposed a three-year budget that reduces these massive prospective expenditures by a paltry 1.3 percent.

Non-Defense Entitlement Spending
(Outlays in Billions of Dollars)

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>Total</u> <u>1983-85</u>
Baseline, Non-defense Entitlement Costs.....	359	387	424	1,169
Proposed Net Savings, House Budget Committee.	2	5	8	15
Savings as a Percentage of Baseline.....	0.7%	1.3%	1.8%	1.3%

The implications of these figures are clear. The future will bring either continued intolerable high deficits, or massive tax increases on already over-burdened taxpayers, unless something is done.

There is, of course, no substitute for responsible fiscal decision-making. But trends of the last decade and attitudes prevalent in the current Congress make it clear that the budget

process itself is badly out of balance and contains a strong inherent bias toward excessive taxing and spending and chronic deficits.

This was not always the case. For many years balancing the budget was considered part of our "unwritten constitution." Excessive public debt was considered dangerous. When deficits were incurred as a result of foreign conflicts or brief recessions, efforts were made to repay them expeditiously. The Civil War, during which the national government incurred enormous debts, was followed by 28 years of surpluses. Ten years of surplus budgets followed the deficit spending of World War I. The fiscal norm during peacetime was clearly a balanced budget.

The deficits of the Great Depression were followed by deficits of World War II, and in subsequent years the view that deficit spending could be used as a tool of economic policy first competed with and finally swamped the earlier commitment to the norm of balanced budgets. The budget has been in deficit in 26 of the 31 years since 1950.

In addition to using the Federal budget as a tool of economic policy, the government became increasingly involved in social welfare, and the Federal government funded programs that in health, education, and a variety of welfare services that would have been considered fundamentally inappropriate in earlier years.

The fiscal norm of a balanced budget, once an unwritten part of our Constitution, no longer operates to restrain Federal spending. Federal spending has risen to 23 percent of GNP from 3 percent in 1930, and taxes are over 21 percent of GNP.

The extraordinary expansion in the scope of activities considered appropriate for Federal intervention has increased enormously the number of people who benefit from Federal largesse, whether the programs are broad-based or specific to particular constituencies. There is thus an inherent and

potentially increasing bias in the political process toward spending to satisfy the multiplicity of fiscal constituencies, and no counter-weight in this process that restrains overall spending.

The inherent bias of the budget process is apparent in the continual deferral of decisions on automatic entitlement spending resulting from a seeming unwillingness to restrain transfer payments. The simple mathematics of the electoral process is at work here. The number of transfer payment beneficiaries has been growing relative to the number of taxpayers. The ratio of people privately employed to transfer payment recipients was over 5 to 1 in 1950, but by 1983 this ratio will have declined to only 1.3.

	Number of People <u>Privately Employed</u>	Number of Transfer <u>Payment Recipients</u>	<u>Ratio</u>
1950.....	52.9	10.4	5.1
1965.....	61.0	30.8	2.0
1983.....	83.1	62.5	1.3

The inherent bias of the budget process is also apparent in the asymmetry between powerful special interest groups and the general taxpayer. The voices of special interest groups are loud and clear, but the effect of each program, taken individually, on the taxpayer is miniscule. This encourages members of Congress to satisfy these special interests at the expense of the general taxpayer. These pressures are brought to bear on members of Congress by voters who in most cases are taxpayers themselves. As taxpayers, they would often be willing to support fiscal

responsibility with respect to all Federal spending, including that of specific personal benefit. But this is not the choice they have. There is no effective way to vote for overall fiscal constraint. Their best choice is to support their own interests, while doing little to oppose the spending that benefits other special interest groups, since only in the aggregate does the multiplicity of spending programs affect the individual taxpayer. For example:

- o Dairy subsidies are \$7,000 per dairy producer; but the individual taxpayer pays only about \$18 a year for dairy subsidies.
- o In 1980 the Federal subsidy per Amtrak passenger exceeded the cost of an economy airline ticket on five routes, and yet the Congress is firmly unwilling to close down any Amtrak train; Federal subsidies for Amtrak cost about \$8 per taxpayer that year, and so the program continues.
- o The annual subsidy for families in newly constructed Section 8 subsidized housing is in some cases as high as \$17,000 a year, but Congressional interest in continuing this extraordinarily expensive method of providing housing subsidies continues, fueled not so much by those who would receive the subsidies but by the contractors who would construct the housing. Subsidized housing outlays averaged over \$1,800 per subsidized household in 1981, but only \$52 per taxpayer in the United States.
- o Higher gasoline taxes and higher spending for highways is supported primarily by highway construction interests.
- o Operating subsidies for the U. S. Merchant Marine are \$60,000 per merchant billet, costing \$4 per taxpayer.
- o The FAA provided services to general aviation amounting to over \$3,600 per general aviation aircraft in excess of

user fees paid by general aviation, but the cost per taxpayer is only \$6.

In conclusion, there is clearly a fundamental systematic bias in our political system in favor of tax spenders versus taxpayers. This bias is encouraged by the fact that it has been unnecessary for the Congress to make evident the consequence of its aggregate spending decisions by voting for tax increases. Tax increases have occurred automatically as a consequence of the progressive tax structure and inflation. The tax burden has increased from 18.6 percent in 1960 to 21 percent in 1981, but since 1960 the Congress has voted individual income tax reductions seven times, while voting a tax increase, in the form of a temporary income tax surcharge to finance the Vietnam war, on only one occasion. Deficit spending and bracket creep have enabled the Congress to avoid politically difficult votes on individual programs, gaining political capital with one interest group without having to pare spending for another group. The voice of the general taxpayer is seldom heard.

The spending bias now inherent in the political process cannot be overcome by statute. That approach has been tried, and it has quite obviously failed. To take just one example: the Byrd-Grassley Amendment required a balanced budget for fiscal 1981, but was without consequence. The problem is, of course, that any such statute can be overridden by a subsequent majority vote.

At this point in our history, Constitutional fiscal norms are clearly needed to restore equilibrium in the budget process. The attempt to draft a Constitutional Amendment for this purpose has a long history, culminating in the resolution now before this Committee -- H.J. Res. 350. The purpose of this proposed amendment is not to write economic policy into the Constitution

by requiring any particular levels of taxation or spending, but rather to make the budget process more responsive and democratic, more neutral, by eliminating the structural bias toward increased levels of spending that are now built into the political system.

1) A Constitutional Amendment, if it is to restore balance, must restrain both deficits and tax growth. Balancing the budget in itself is not enough. It would not restrain the political pressure for higher spending and could lead to continual increases in the share of the nation's output consumed by the Federal government.

H.J. Res. 350 does restrain both deficits and tax growth. It limits growth in taxes by requiring that the increase in taxes in any given fiscal year be no greater than the prior calendar year's growth in national income. It thus ends automatic increases in the tax burden. In the absence of legislation cutting tax rates, taxpayers have experienced annual increases in tax burdens without explicit action by the Congress to raise taxes. Under H.J. Res. 350, this could no longer occur. The budget could not be balanced at whatever level of spending the Congress happened to support simply by increasing the tax burden.

H.J. Res. 350 restrains deficits by a combination of two of its provisions. First, Congress must plan a balanced budget: planned outlays must be no greater than planned receipts. This is the fiscal norm of a balanced budget.

Second, H.J. Res. 350 requires that actual outlays not exceed planned outlays. This is an absolute requirement of the proposed amendment. The fiscal norms of a balanced budget and of tax increases limited to the growth in national income can be overcome by other provisions of the amendment, but this norm cannot.

Acting together, these two provisions of the amendment will restrain deficits. Although actual receipts can be lower than planned, creating a deficit for the fiscal year, the lower

receipts will constrain outlay growth in a subsequent fiscal year, preventing a continuation of spending growth that outstrips the growth in national income. Thus both tax growth and outlay growth are tied to the increase in national income, effectively restraining deficit spending.

2) A Constitutional Amendment must also be flexible.

H.J. Res. 350 does provide flexibility. It allows the Congress to vote to accept a deficit if three-fifths of the full membership of both Houses feel such a deficit is necessary; and it allows an ordinary majority of the full membership plus the President to approve an increase in taxes in excess of the rate of increase in the prior year's national income.

Occasions may arise when the Congress considers deficit financing of expenditures necessary -- in time of prolonged recession, for example, or under threat of war. For such reasons, or any others that the Congress may consider appropriate, an unbalanced budget statement can be adopted. It must, however, be adopted explicitly, by a vote on that subject alone; and the requirement that actual outlays not exceed statement outlays would continue to hold. The amount of the planned deficit would thus be explicit, and individual members of Congress would be made accountable for the decision to undertake expenditures requiring deficit financing.

Similarly, the Congress can, by an explicit decision in a vote solely on that subject, increase the Federal share of the Gross National Product taken in taxes. The requirement is not a great deal more strenuous than is now imposed for votes on tax measures -- the only difference is that a majority of the full membership rather than those present is required. Like other tax bills, the resulting legislation would be subject to Presidential veto.

Thus, the fiscal norm limiting tax increases to the growth in national income is relatively easy to overcome; H.J. Res. 350

would not enshrine in the Constitution any specific ratio of taxes to national income. It would merely make the decision to increase the Federal tax burden an explicit one for which each member of Congress would stand accountable.

Furthermore, H.J. Res. 350 provides flexibility with respect to economic expansions and contractions. It does not require that actual receipts equal planned receipts, and thus there is no implication that the Congress would be required to raise tax rates to deal with declining receipts in a recession, nor must higher-than-expected receipts be returned to the taxpayers; an actual surplus may occur.

Also, the growth of actual outlays in a given fiscal year is linked, through the three requirements of the amendment, to growth in national income in the calendar year prior to the fiscal year. The average length of the business cycle in peacetime -- from peak to peak or trough to trough -- has been, over a long period of time, about 46 or 47 months. The 21-month lag in the proposed amendment between national income growth and outlay growth is about half this average length.

Outlays in years of recession would thus be increasing in accordance with rates of growth in the previous expansion; and during expansions, growth in outlays would be limited to the growth in national income during the previous downturn, providing a counter-cyclical fiscal policy that would tend to moderate the business cycle.

H.J. Res. 350 does not require that actual outlays be no greater than actual receipts, nor does it require actual receipts to be equal to receipts expected when the Congress adopted its budget statement. Revenues are permitted to fall, and recession-induced deficits can occur. A one-point increase in the rate of unemployment increases the deficit by about \$28 billion, but only \$7 billion of this is an increase in outlays. Most of it -- \$21 billion -- is a decline in tax revenues.

H.J. Res. 350 also provides for deficits in wartime, permitting the Congress to waive its requirements for any year in which a declaration of war is in effect. A wide variety of events, not necessarily entailing a declaration of war may, however, pose threats to national security. The Administration would, therefore, encourage the Congress to amend H.J. Res 350 to allow a broader range of events -- unforeseen events posing an imminent threat to national security -- to qualify for a waiver. The Administration would be pleased to work with the sponsors of the amendment on language to ensure flexibility to help meet an increase in outlays in a given year due to unforeseeable events that are imminent threats to the national security.

3) Finally, Constitutional fiscal norms must be enforceable. H.J. Res. 350 accomplishes this by enforcing outlays, requiring that actual outlays not exceed statement outlays. Outlays are under far greater control of the Congress than receipts. The proposed amendment places no requirements on actual receipts; they need not equal or exceed statement receipts. Nor does it require an equivalence between outlays and receipts in a given fiscal year. The amendment is silent on how this fiscal norm is to be achieved, except to say that "The Congress and the President shall ensure that actual outlays do not exceed the outlays set forth in such statement." The legislative history of S.J. Res. 58, the Senate counterpart of H.J. Res. 350, notes that this clause is intended to impose a mandate on the President and the Congress to monitor the flow of actual outlays and to take such steps as are necessary to prevent actual outlays from exceeding statement outlays.

It is sometimes argued that meeting the outlay norm of the amendment would be extremely difficult because a major portion -- over 75 percent -- of the budget is uncontrollable. This is not the case. The only truly uncontrollable item in the Federal

Budget is interest on the national debt -- about 12 percent of outlays in the current fiscal year.

All other spending is controllable by Congress. Last year Congress demonstrated that it is possible to control "relatively uncontrollable" spending when it cut entitlements by nearly \$40 billion over fiscal 1983-85. This is a small start, but it is a start.

At the present time, 77 percent of 1983 budget outlays are classified as "relatively uncontrollable" under current law -- 47 percent for payments to individuals and 17 percent for prior year contracts and obligations, in addition to 13 percent for net interest. This is up from 69 percent in 1973 and 59 percent in 1967. The budget did not get into this supposedly uncontrollable condition by accident, and it does not have to remain in this condition. The imbalance between current law outlays and receipts, in which so-called "relatively uncontrollable" outlays are clearly involved, extends into future years. This imbalance can and should be corrected by the Congress. The Constitutional norms of H.J. Res. 350 would force this issue to be addressed on a regular basis, and encourage the problems of future years to be considered in the current budget process.

Outlays in a given fiscal year may, of course, be greater than expected as a result of unforeseen economic events. It is argued that enforcement of the requirement that actual outlays not exceed statement outlays could therefore lead to drastic and perhaps even draconian measures to reduce outlays within a given fiscal year.

There is a solution to this problem, which is simply to budget for it -- to establish a reserve or contingency fund to cover outlays that exceed their expected level. The increase in actual 1980 and 1981 outlays resulting from economic changes was about 5 percent of total outlays each year. Thus, a reserve of 5 to 8 percent of outlays should be a reasonable amount.

Finally, there is concern that placing fiscal norms in the Constitution will invite their circumvention by a variety of novel devices, and thus the amendment would fail to accomplish its purpose. H.J. Res. 350 prevents, however, evasion of its discipline by a definition of outlays that includes off-budget outlays such as those of the Federal Financing Bank. It leaves unresolved -- as it should -- treatment of a number of other budgetary concepts. The Administration would therefore recommend that a Bipartisan Budget Concepts Commission be established, in the event the amendment is ratified, to define budget concepts and recommend machinery for achieving the fiscal norms established by the amendment.

While concepts need to be defined and machinery put into place, evasion of the amendment is actually less likely than the skills of creative budgeteers would lead one to believe. Ratification of the amendment would be a strong expression on the part of the voters for the fiscal norms it embodies, and thus the amendment should actually help to restrain creative budgeting rather than encourage it, so long as the public is willing to hold their representatives responsible for enforcing the Constitution.

In conclusion, H.J. Res. 350 would restore to the budget process the balance so badly needed between tax spenders and taxpayers and require the fiscal discipline that has been absent from our policies over the last several decades. It would thus end the seemingly automatic process of ever-growing expansion of the Federal sector, increasing Federal tax burdens, and chronic deficits. The arguments made in opposition to the proposed amendment are, on the whole, simply excuses for the status quo -- for a continuation of the political bias in favor of spending and its consequent fiscal irresponsibility.

In its 1982 Budget revision, the Reagan Administration proposed to reduce receipts to 19.5 percent of GNP by 1986. In part because of our success in reducing inflation, receipts under current law are estimated to be as low as 18.5 percent of GNP by 1986. The additional revenue measures of the 1983 Budget would raise this to an estimated 18.9 percent. The Administration's proposals represent in concrete form the basic convictions of the President that the Federal government is too large, and both taxes and spending should be reduced.

The balanced budget/tax limitation amendment is a less strong statement of fiscal norms than that implicit in the proposals of this Administration. It does not claim that any percentage of GNP or national income is the right amount for the Federal government to take in taxes and spend. It merely requires that if that percentage is increased, a majority of the full membership of both Houses of Congress must vote explicitly to do so. And it does not require that the budget in fact be balanced. It merely requires that -- except in extraordinary circumstances -- the Congress plan to spend no more than it takes in, and then that it ensure, with the President, that actual spending does not exceed planned spending.

The amendment does not tell the President and the Congress how to achieve these norms, but only requires that they do so. Surely this is not too much to ask.

I would be pleased to answer any questions you may have.

The Constitution and Fiscal Reform

[From The Wall Street Journal, February 4, 1982]

By JAMES HALL DAVIES

Alaska's legislature recently called for a constitutional convention to draft a balanced budget amendment. This was not merely a dyed-in-the-scarlet resolution of the sort states sometimes adopt when the Star-Spangled Banner is to make corn the national vegetable.

Under Article V of the Constitution, Congress must call a convention when two-thirds of the state legislatures petition it to do so. Alaska was the 31st state to officially act; the first since Ronald Reagan was elected. If three more states act, Congress will have to convene one. If four, a convention drafts a stronger one.

The threat of a convention call is probably the only real power which the states retain over the federal government. Because this power is real, many legislatures have been reluctant to use it. They have feared that Congress would retaliate for being nudged in an unwelcome direction by using one of its many real powers over the states.

The largest of these has been the power of the purse—which was quite effectively dangled before legislators when the constitutional convention movement gathered momentum during the last years of the Carter administration. Several states which had been poised to join the convention all stopped short when they learned that slashing revenue sharing and reducing public works expenditures in the offending states.

Threat and Persuasion

The anti-convention lobbying, coordinated through Vice President Mondale's office, also had a more subtle purpose: to bring the deficit under control. They were told, in effect, "Give us a chance." The cause of the deficit was really just the effect of price increases. A passing phenomenon. And besides, the congressional budget process was beginning to work, or so they said. This combination of threat and persuasion worked.

But after the election, when Mr. Reagan was sworn in, bad state legislators cottoned and to be cautious about employing the convention call. Although six states went half way to acting in 1981, and final passage failed by only a few votes in Missouri

and Washington, the number petitioning for a convention remained stuck at 31. The big question, of course, is whether the states will ever get around to drafting a balanced budget amendment. The Reagan administration has proved that constitutional reform was unnecessary—by bringing the budget under control and eliminating the deficits.

But as the vote in Alaska demonstrates, there is nothing in the record of the last year to encourage an estimate that the federal budget will soon be balanced, or that it will ever be balanced. Every economist

contingent on the size of future deficits. What this means is the fact that the deficits have grown, not because of tax reduction, but because of increased government spending. Mr. Reagan's 1982 budget will show that the percentage of national income spent by the federal government has not been reduced. Nor has the percentage of income taken in federal taxes declined. All the nominal tax reductions have achieved for most taxpayers, is to offset planned increases in taxes. In short, current and projected deficits reflect the in-

Mr. Reagan tried and failed to achieve credible spending reductions through ordinary political processes. . . . The only way spending growth can ever be curtailed is by constitutional amendment.

who cares to hazard a guess about federal deficits in the years to come is projecting deficits at ever higher levels. By 1986, there could be as much as \$300 billion in red ink. Even if such estimates are grossly exaggerated, they still point to chronic fiscal imbalance. More evidence for those of us who believe that Washington's budget problem will not be solved without constitutional reform.

This is a view that members of the legislative branch have been quicker to grasp than many opinion leaders and economic experts. Perhaps this is because, as legislators, they face some of the same pressures to spend that bedevil Congressmen. These pressures have little to do with ideology. They arise from the basic dynamics of the political process. Legislators are rewarded for spending on behalf of small organized constituencies at the expense of the large and unorganizable body of citizens. A program that takes a dime from every taxpayer could yield thousands of dollars to every member of a small group. That group will work hard to gain and keep the money. No one will work hard to save a dime. From this imbalance of interests, the rising government spending has resulted.

Some proponents of tax reduction have fallen into the trap of arguing that "deficits don't matter" because some big spenders want to make rate adjustments

eriment out of credit markets, it would also help increase the incentive effect of any given tax reduction. Inflation and other reasons would have lower interest rates, which would have a stimulative effect on any given asset. Without deficits there would be less likelihood of expansionary monetary policies by the Fed. This would mean less inflation, implying a longer investment horizon.

A constitutional amendment would help insulate the marketplace from political shocks by making it more difficult for future administrations to casually enact the fiscal reforms that have proved so difficult to achieve. Because Congress could not raise taxes without a direct and explicit super-majority vote, there could be no more bracket creep. The federal portion of national income would be limited.

A More Credible Signal

An amendment mandating a balanced budget and limiting taxes would not only be a more credible signal that the federal government could maintain spending discipline, it would also, therefore, help reduce expenditures. Interest charges on our trillion dollar debt are now a significant item in the budget. Interest rates today are higher than they might be otherwise because there is no credible signal that future federal deficits will be too great to be accommodated politically with a tight money policy. An amendment would change that expectation.

Not just American politicians, but all politicians have failed to reduce government spending through ordinary political processes. Except on a temporary basis at the end of wars, no Western nation has yet succeeded in slashing the government budget. If the Reagan program were to succeed, in this respect, it would be the first to do so.

Instead of attempting to fashion political miracles, the President and his advisors should employ their scarce opportunities to implement lasting reforms. That means reshaping the budgetary process so that we have fiscal responsibility in Washington as a matter of course and not as a kind of heroic exception. The way to do that is to enact a balanced budget tax limitation amendment to the Constitution.

Mr. Davidson is chairman of the National Taxpayers Union.

WEDNESDAY, APRIL 28, 1982

THE WALL STREET JOURNAL.

The Case for an Amendment to Limit Spending

By LEWIS UHLER

The Tax Limitation/Balanced Budget Amendment (S.J. Res. 58 and H.J. Res. 350) has emerged as one of the major issues of our day. But media commentary on this profound issue is often as superficial and inaccurate as the pace of the issue's emergence is dramatic.

In the interest of enlightened debate and to correct a few misconceptions about the amendment (including some issues raised in the Journal's editorial of March 29), herewith a few "Issues and Answers":

Issue: *Don't tamper with the constitutional formula established by the founding fathers.*

Answer: The founding fathers, far from endorsing the fiscal environment in which we find ourselves, carefully circumscribed the taxing powers and operational scope of the federal government. Adoption of the 16th Amendment (the income tax) made a profound change in the resource base of the federal structure, and the judiciary's loose interpretation of the interstate commerce, general welfare and other constitutional clauses accommodated enormous increases in the breadth of federal activity. We need a constitutional amendment to restore, not thwart, the founders' central purpose.

Issue: *Under President Reagan the current system shows signs of working and hence a constitutional solution is unnecessary.*

Answer: President Reagan has provided heroic leadership in an effort to re-

duce the rate of federal spending and tax growth. But the honeymoon period which can accommodate the political exertions required lasts only a short while. Witness the decline in public sentiment for the President—and the renewed intransigence of the congressional big spenders who again are feeling their oats.

Issue: *The amendment may be more cosmetic than substantive.*

Answer: The amendment does not require an exact equality of revenues and outlays each year. However, Section 1 does require that Congress plan a balanced budget as the federal norm by requiring a statement, adopted annually by Congress, in which receipts and outlays are in balance—and actual outlays may not exceed those in the statement. So, at bottom, the amendment is a spending limit. A three-fifths vote of the entire membership of both houses is required to intentionally plan an unbalanced budget. The effect of the amendment will be to achieve a balance and even surpluses over the life of a business cycle.

But the provision alone would not assure responsible budgeting. Section 2 limits the allowable receipts growth from year to year (and hence spending growth) to national income growth in the prior full calendar year. As the Journal observes, "indexing" of the entire federal revenue structure—far better than merely indexing the personal income tax by statute which

may be waived by Congress. To exceed this a majority of the full membership of both houses must so vote and approve a tax bill producing the additional receipts. This joins the political detriment of voting higher taxes with the political income of higher spending in a highly visible vote—and gives the President veto power and the Senate a chance to filibuster. (In time of declared war the limit is waived.)

Issue: *The amendment may not be enforceable and anyway Congress will find methods to circumvent the impact of the amendment.*

Answer: The amendment is enforceable and will be enforced. There would be high political risk attached to the very visible votes to unbalance the budget or increase the rate of taxing and spending growth. That's the external political control.

The amendment is designed to assure internal control as well. It requires that Congress and the President assure that actual outlays do not exceed outlays authorized under the balanced-budget statement. This safeguard plays off of the historic jealousy of Congress over its appropriations/budgetary authority. Congressional leaders become apoplectic when the President intervenes in their budget decisions—witness congressional reaction to President Nixon's unilateral impoundment of funds in 1973. Because the President will have to step in and make outlay decisions if actual outlays threaten to exceed the limit, Congress, to preserve its prerogatives, will

have to adopt fiscal procedures and priorities to assure compliance.

Certainly, we can expect Congress to test the limits of the amendment—and seek to "ooze" around and through it where possible. That's where the National Tax Limitation Committee and other taxpayer lobbies will play a vital role in shaping the implementing legislation and in blowing the whistle on efforts to circumvent the amendment.

Will Congress seek to use regulations to expand its authority over citizens and organizations? Regulation has always been an option to explicit taxing and spending. It will remain under the amendment. However, as Prof. James Buchanan has said about this point, "To fix the fence in one spot does not ensure that the cattle will not get out of the pasture at some other place. But it does mean that the cattle are less likely to get out than before the fence in the one spot was fixed."

To claim perfection would be foolish and arrogant. What can be claimed is that the Tax Limitation/Balanced Budget Amendment is thoughtfully and soundly crafted to achieve a specific objective: reversal of the current Washington bias toward higher taxes and spending and unbalanced budgets. As Milton Friedman often cautions, "In our quest for perfection, we must not let the best be the enemy of the good."

Mr. Uhler is president and founder of the National Tax Limitation Committee.

[From the Atlantic, February 1983]

LESS RED INK—AN ARGUMENT THAT THE BALANCED-BUDGET AMENDMENT WOULD BE A RARE MERGING OF PUBLIC AND PRIVATE INTERESTS

(By Milton Friedman ¹)

Our elected representatives in Congress have been voting larger expenditures year after year—larger not only in dollars but as a fraction of the national income. Tax revenue has been rising as well, but nothing like so rapidly. As a result, deficits have grown and grown.

At the same time, the public has demonstrated increasing resistance to higher spending, higher taxes, and higher deficits. Every survey of public opinion shows a large majority that believes that government is spending too much money, and that the government budget should be balanced.

How is it that a government of the majority produces results that the majority opposes?

The paradox reflects a defect in our political structure. We are ruled by a majority—but it is a majority composed of a coalition of minorities representing special interests. A particular minority may lose more from programs benefiting other minorities than it gains from programs benefiting itself. It might be willing to give up its own programs as part of a package deal eliminating all programs—but, currently, there is no way it can express that preference.

Similarly, it is not in the interest of a legislator to vote against a particular appropriation bill if that vote would create strong enemies while a vote in its favor would alienate few supporters. That is why simply electing the right people is not a solution. Each of us will be favorably inclined toward a legislator who has voted for a bill that confers a large benefit on us, as we perceive it. Yet who among us will oppose a legislator because he has voted for a measure that, while requiring a large expenditure, will increase the taxes on each of us by a few cents or a few dollars? When we are among the few who benefit, it pays us to keep track of the vote. When we are among the many who bear the cost, it does not pay us even to read about it.

The result is a major defect in the legislative procedure whereby a budget is enacted: each measure is considered separately, and the final budget is the sum of the separate items, limited by no effective overriding total. That defect will not be remedied by Congress itself—as the failure of one attempt after another at reforming the budget process has demonstrated. It simply is not in the self-interest of legislators to remedy it—at least not as they have perceived their self-interest.

Dissatisfaction with ever-increasing spending and taxes first took the form of pressure on legislators to discipline themselves. When it became clear that they could not or would not do so, the dissatisfaction took the form of a drive for constitutional amendments at both the state and the federal levels. The drive captured national attention when Proposition 13, reducing property taxes, was passed in California; it has held public attention since, scoring successes in state after state. The constitutional route remains the only one by which the general interest of the public can be expressed, by which package deals, as it were, can be realized.

Two national organizations have led this drive: the National Tax Limitation Committee (NTLC), founded in 1975 as a single-issue, nonpartisan organization to serve as a clearinghouse for information on attempts to limit taxes at a local, state, or federal level, and to assist such attempts; and the National Taxpayers Union (NTU), which led the drive to persuade state legislatures to pass resolutions calling for a constitutional convention to enact an amendment requiring the federal government to balance its budget. Thirty-one states have already passed resolutions calling for a convention. If three more pass similar resolutions, the Constitution requires Congress to call such a convention—a major reason Congress has been active in producing its own amendment.

The amendment that was passed by the Senate last August 4, by a vote of 69 to 31 (two more than the two thirds required for approval of a constitutional amendment), had its origin in 1973 in a California proposition that failed at the time but passed in 1979 in improved form (not Proposition 13). A drafting committee organized by the NTLC produced a draft amendment applicable to the federal government in late 1978. The NTU contributed its own version. The Senate Judiciary Committee approved a final version on May 19, 1981, after lengthy hearings and with the cooperation of all the major contributors to the earlier work. In my opinion, the commit-

¹ Milton Friedman, emeritus professor of economics at the University of Chicago, is a senior research fellow at the Hoover Institution.

tee's final version was better than any earlier draft. That version was adopted by the Senate except for the addition of section 6, proposed by Senator William Armstrong, of Colorado, a Republican. Approval by the Senate, like the sponsorship of the amendment, was bipartisan: forty-seven Republicans, twenty-one Democrats, and one Independent voted for the amendment.

The House Democratic leadership tried to prevent a vote on the amendment in the House before last November's elections. However, a discharge petition forced a vote on it on October 1, the last full day of the regular session. The amendment was approved by a majority (236 to 187), but not by the necessary two thirds. Again, the majority was bipartisan: 167 Republicans, 69 Democrats. In view of its near passage and the widespread public support for it, the amendment is sure to be reintroduced in the current session of Congress. Hence it remains a very live issue.

The amendment as adopted by the Senate would achieve two related objectives; first, it would increase the likelihood that the federal budget would be brought into balance, not by prohibiting an unbalanced budget but by making it more difficult to enact a budget calling for a deficit; second, it would check the growth of government spending—again, not by prohibiting such growth but by making it more difficult.

The amendment is very much in the spirit of the first ten amendments—the Bill of Rights. Their purpose was to limit the government in order to free the people. Similarly, the purpose of the balanced-budget-and-tax-limitation amendment is to limit the government in order to free the people—this time from excessive taxation. Its passage would go a long way to remedy the defect that has developed in our budgetary process. By the same token, it would make it more difficult for supporters of ever-bigger government to attain their goals.

It is no surprise, therefore, that a torrent of criticism has been loosed against the proposed amendment by people who believe that our problems arise not from excessive government but from our failure to give government enough power, enough control over us as individuals. It is no surprise that Tip O'Neill and his fellow advocates of big government tried to prevent a vote in the House on the amendment, and used all the pressure at their command to prevent its receiving a two thirds majority.

It is no surprise, either, that when the amendment did come to a vote in the House, a substantial majority voted for it. After all, in repeated opinion polls, more than three quarters of the public have favored such an amendment. Their representatives do not find it easy to disregard that sentiment in an open vote—which is why Democratic leaders tried to prevent the amendment from coming to a vote. When their hand was forced, they quickly introduced a meaningless substitute that was overwhelmingly defeated (346 to 77) but gave some representatives an opportunity to cast a recorded vote for a token budget-balancing amendment while at the same time voting against the real thing.

I have been much more surprised, and dismayed, by the criticism that has been expressed by persons who share my basic outlook about the importance of limiting government in order to preserve and expand individual freedom—for example, the editors of the *The Wall Street Journal* and a former editor and current columnist, Vermont Royster. They do not question the objectives of the amendment, but they doubt its necessity and potential effectiveness.

Those doubts are presumably shared by many other thoughtful citizens of all shades of political opinion who are united by concern about the growth of government spending and deficits. Here, for their consideration, are my answers to the principal objections to the proposed amendment that I have come across, other than those that arise from a desire to have a still-bigger government:

1. The amendment is unnecessary. Congress and the President have the power to limit spending and balance the budget.

Taken seriously, this is an argument for scrapping most of the Constitution. Congress and the President have the power to preserve freedom of the press and of speech without the First Amendment. Does that make the First Amendment unnecessary? Not surprisingly, I know of no one who has criticized the balanced-budget amendment as unnecessary—however caustic his comments on congressional hypocrisy—who would draw the conclusion that the First Amendment should be scrapped.

It is essential to look not only at the power of Congress but at the incentives of its members—to act in such a way as to be re-elected. As Phil Gramm, a Democratic congressman from Texas, has said: "Every time you vote on every issue, all the people who want the program are looking over your right shoulder and nobody's looking over your left shoulder. * * * In being fiscally responsible under such circumstances, we're asking more of people than the Lord asks."

Under present arrangements, Congress will not in fact balance the budget. Similarly, a President will not produce a balanced budget by using the kind of vetoes

that would be required. The function of the amendment is to remedy the defect in our legislative procedure that distorts the will of the people as it is filtered through their representatives. The amendment process is the only effective way the public can treat the budget as a whole. That is the function of the First Amendment, as well—it treats free speech as a bundle. In its absence, Congress would consider each case “on its merits.” It is not hard to envisage the way unpopular groups and views would fare.

2. The President and Congress are guilty of hypocrisy in voting simultaneously for a large current deficit and for a constitutional amendment to prevent future deficits.

Of course, I have long believed that congressional hypocrisy and shortsightedness are the only reasons there is a ghost of a chance of getting Congress to pass an amendment limiting itself. Most members of Congress will do anything to postpone the problems they face by a couple of years—only Wall Street has a shorter perspective. If the hypocrisy did not exist, if Congress behaved “responsibly,” there would be no need for the amendment. Congress’ irresponsibility is the reason we need an amendment and at the same time the reason that there is a chance of getting one.

Hypocrisy may eventually lead to the passing of the amendment. But hypocrisy will not prevent the amendment from having important effects three or four years down the line—and from casting its shadow on events even earlier. Congress will not violate the Constitution lightly. Members of Congress will wriggle and squirm; they will seek, and no doubt find, subterfuges and evasions. But their actions will be significantly affected by the existence of the amendment. The experience of several states that have passed similar tax-limitation amendments provides ample evidence of that.

3. The amendment is substantive, not procedural, and the Constitution should be limited to procedural matters. The fate of the prohibition amendment is a cautioning tale that should give us pause in enacting substantive amendments.

If this amendment is substantive, so is the income-tax (sixteenth) amendment and so are many specific provisions of the Constitution. The income-tax amendment does not specify the rate of tax. It leaves that to Congress. Similarly, this amendment does not specify the size of the budget. It simply outlines a procedure for approving it: the same as now exists if total legislated outlays do not exceed an amount determined by prior events (the prior budget and the prior growth in national income); and by a majority of 60 percent if total legislated outlays do exceed that amount. The requirement of a supernormal majority is neither substantive nor undemocratic nor unprecedented. Witness the two-thirds majority necessary to override a presidential veto or approve a treaty.

The prohibition amendment was incompatible with the basic aim of the Constitution, because it was not directed at limiting government. On the contrary, it limited the people and freed government to control them. The balanced-budget-tax-limitation amendment is thoroughly compatible with the basic role of the Constitution, because it seeks to improve the ability of the public to limit government.

4. The amendment is unduly rigid, because it requires an annually balanced budget.

This is a misconception. Section 1 of the amendment prohibits a planned budget deficit unless it is explicitly approved by three fifths of the members of the House and Senate. It further requires the Congress and the President to “ensure that actual outlays do not exceed the outlays set forth in [the budget] statement.” But it does not require that actual receipts equal or exceed statement receipts. A deficit that emerged because a recession produced a reduction in tax receipts would not be in violation of the amendment, provided that outlays were no greater than statement outlays. This is a sensible arrangement: outlays can be controlled more readily over short periods than receipts.

I have never been willing to support an amendment calling for an annually balanced budget. I do support this one, because it has the necessary flexibility.

5. The amendment will be ineffective because (a) it requires estimates of receipts and outlays, which can be fudged; (b) its language is fuzzy; (c) the Congress can find loopholes to evade it; (d) it contains no specific provisions for enforcement.

(a) It will be possible to evade the amendment by overestimating receipts—but only once, for the first year the amendment is effective. Thereafter, section 2 of the amendment limits each year’s statement receipts to the prior year’s statement receipts plus the prior rate of increase of national income. No further estimates of budget receipts are called for. This is one of the overlooked subtleties in the amendment.

Any further fudging would have to be of the national-income estimates. That is possible but both unlikely and not easy. What matters is not the level of national

income but the percentage change in a national income. Alterations of the definition of national income that affect levels are likely to have far less effect on percentage changes. Moreover, making the change in income artificially high in one year will tend to make it artificially low the next. All in all, I do not believe that this is a serious problem.

(b) The language is not fuzzy. The only undefined technical term is "national income." The amendment also refers to "receipts" and "outlays," terms of long-standing usage in government accounting in section 1, total receipts and total outlays are defined explicitly.

Nor is the amendment a hastily drawn gimmick designed to provide a fig leaf to hide Congress's sins. On the contrary, it is a sophisticated product, developed over a period of years, that reflects the combined wisdom of the many persons who participated in its development.

(c) Loopholes are a more serious problem. One obvious loophole—off budget outlays—has been closed by phrasing the amendment in terms of total outlays of the United States except those for repayment of debt principal." But other, less obvious, loopholes have not been closed. Two are particularly worrisome: government credit guarantees, and mandating private expenditures for public purpose (e.g., antipollution devices on automobiles). These loopholes now exist and are now being resorted to. I wish there were some way to close them. No doubt the amendment would provide an incentive to make greater use of them. Yet I find it hard to believe that they are such attractive alternatives to direct government spending that they would render the amendment useless.

(d) No constitutional provision will be enforced unless it has widespread public support. That has certainly been demonstrated. However, if a provision does have widespread support—as public-opinion polls have clearly shown that this one does—legislators are not likely to flout it, which brings us back to the loopholes.

Equally important, legislators will find it in their own interest to confer an aura of inviolability on the amendment. This point has been impressed on me by the experience of legislators in states that have adopted amendments limiting state spending. Prior to the amendments, they had no effective defense against lobbyists urging spending programs—all of them, of course, for good purposes. Now they do. They can say: "Your program is an excellent one; I would like to support it, but the total amount we can spend is fixed. To get funds for your programs, we shall have to cut elsewhere. Where should we cut?" The effect is to force lobbyists to compete against one another rather than form a coalition against the general taxpayer.

That is the purpose of constitutional rules: to establish arrangements under which private interest coincides with the public interest. This amendment passes that test with flying colors.

6. The key problem is not deficits but the size of government spending.

My sentiments exactly. Which is why I have never supported an amendment directed solely at a balanced budget. I have written repeatedly that while I would prefer that the budget be balanced, I would rather have government spend \$500 billion and run a deficit of \$100 billion than have it spend \$800 billion with a balanced budget. It matters greatly how the budget is balanced, whether by cutting spending or by raising taxes.

In my eyes, the chief merit of the amendment recommended by the Senate Judiciary Committee is precisely that it does limit spending. Section 1 requires that statement outlays be no greater than statement receipts; section 2 limits the maximum increase in statement receipts; the two together effectively limit statement outlays. Moreover, if in any year Congress manages to keep statement receipts and outlays below the maximum level, the effect is to lower the maximum level for future years, thus fostering a gradual ratcheting down of spending relative to national income.

A further strength of the amendment is the provision for approving an exceptional increase in statement receipts (hence in statement outlays). The spending-limitation amendment that was drafted by the National Tax Limitation Committee required a two-thirds majority of both houses in order to justify an exceptional increase in outlays. The amendment passed by the Senate requires only a "a majority of the whole number of both houses of Congress." However, the majority must vote for an explicit tax increase. I submit that it is far easier to get a two-thirds majority of Congress to approve an exceptional increase in spending than to get a simple majority to approve an explicit increase in taxes. So this is a stronger, not a weaker, amendment.

Section 6, proposed by Senator Armstrong in the course of Senate debate makes the debt ceiling permanent and requires a supermajority vote to raise it. That provision was approved by a narrow majority composed of a coalition of right-wing Republicans and left-wing Democrats—the one group demonstrating its hardcore con-

servatism, the other seeking to reduce the chances of adoption of the basic amendment.

I do not favor the debt-limit provision. Its objective—strengthen pressure on Congress to balance the budget—is fine, and it may be that it would do little harm. But it seems to me both unnecessary and potentially harmful. I trust that it will be eliminated if and when the amendment is finally approved by Congress. I shall favor the amendment even if the debt-limit provision is left in, but less enthusiastically.

7. The amendment introduces a new economic theory into the Constitution.

It does nothing of the kind—unless the idea that there should be some connection between receipts and outlays is a new economic theory. The amendment does not even change the present budget process if Congress enacts a balanced budget that rises by no greater a percentage than does national income. But it does significantly stiffen the requirement for passing a budget that is in deficit or for raising the fraction of our income spent on our behalf by the government.

The amendment recommended by the Senate Judiciary Committee deserves the wholehearted backing of every believer in a limited government and maximum freedom for the individual.